

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES OF AMERICA,)
) CR-18-00258-EJD
 PLAINTIFF,)
) SAN JOSE, CALIFORNIA
 VS.)
) MARCH 14, 2022
 RAMESH "SUNNY" BALWANI,)
) VOLUME 4
 DEFENDANT.)
) PAGES 635 - 691

TRANSCRIPT OF TRIAL PROCEEDINGS
BEFORE THE HONORABLE EDWARD J. DAVILA
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

FOR THE PLAINTIFF: UNITED STATES ATTORNEY'S OFFICE
BY: JOHN C. BOSTIC
JEFFREY B. SCHENK
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SAN JOSE, CALIFORNIA 95113

BY: ROBERT S. LEACH
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OAKLAND, CALIFORNIA 94612

(APPEARANCES CONTINUED ON THE NEXT PAGE.)

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PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY
TRANSCRIPT PRODUCED WITH COMPUTER

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A P P E A R A N C E S: (CONT'D)

FOR DEFENDANT BALWANI: ORRICK, HERRINGTON & SUTCLIFFE LLP
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ALSO PRESENT:

OFFICE OF THE U.S. ATTORNEY
BY: MADDI WACHS, PARALEGAL
SARA SLATTERY, PARALEGAL

UNITED STATES POSTAL INSPECTION SERVICE
BY: CHRISTOPHER MCCOLLOW

FEDERAL BUREAU OF INVESTIGATION
BY: MARIO C. SCUSSEL

UNITED STATES FOOD & DRUG
ADMINISTRATION
BY: GEORGE SCAVDIS

JURY CONSULTANT
BY: DAVID PERROTT

1 SAN JOSE, CALIFORNIA

MARCH 14, 2022

2 P R O C E E D I N G S

3 (COURT CONVENED AT 10:09 A.M.)

4 (PROSPECTIVE JURY PANEL OUT AT 10:09 A.M.)

5 THE COURT: LET'S GO ON THE RECORD IN
6 18-258-UNITED STATES VERSUS BALWANI.

7 LET ME GET THE APPEARANCE OF THE PARTIES, PLEASE.

8 WHO APPEARS FOR THE GOVERNMENT?

9 MR. SCHENK: GOOD MORNING, YOUR HONOR.

10 JEFF SCHENK FOR THE UNITED STATES.

11 I'M JOINED BY JOHN BOSTIC AND ROBERT LEACH.

12 THE COURT: GOOD MORNING.

13 MR. COOPERSMITH: I'M JEFF COOPERSMITH AND I
14 REPRESENT MR. BALWANI.

15 I'M JOINED BY MY COLLEAGUES, AMY WALSH, STEVE CAZARES,
16 AARON BRECHER, AND SHAWN ESTRADA.

17 THE COURT: GOOD MORNING.

18 MR. COOPERSMITH: I AM SORRY, AND MOLLY MCCAFFERTY
19 AND SACHI SCHURICHT.

20 THE COURT: GOOD MORNING. THANK YOU. WE'RE OUTSIDE
21 OF THE PRESENCE OF OUR PROSPECTIVE PANEL MEMBERS.

22 AS YOU RECALL, I WAS GOING TO SWEAR IN THE SELECTED
23 JURORS, AND THEN TO PRE-INSTRUCT, EXCUSE THEM FOR THE DAY, AND
24 THEN WE'LL BEGIN OPENINGS TOMORROW.

25 I'M INFORMED THAT WE'RE AWAITING THE ARRIVAL OF ONE JUROR

10:11AM 1 FROM SANTA CLARA, I BELIEVE. JUROR 142 IS APPARENTLY EN ROUTE,
10:11AM 2 NOT YET HERE.

10:11AM 3 MY COURTROOM DEPUTY INFORMS THAT SHE HAS -- WAS SPOKEN TO
10:11AM 4 BY TWO JURORS WHO HAVE EXPRESSED HARDSHIP EXCUSES THIS MORNING.

10:11AM 5 JUROR 101 SPEAKS TO EMPLOYMENT ISSUES. SHE HAS A
10:11AM 6 RESTAURANT AND I BELIEVE SHE TOLD -- MY COURTROOM DEPUTY
10:12AM 7 INDICATED THAT SHE TOLD HER THE HUSBAND RUNS A DIFFERENT STORE
10:12AM 8 OTHER THAN THE RESTAURANT.

10:12AM 9 I HAVEN'T HEARD FROM -- 26 I THINK IS THE OTHER JUROR?

10:12AM 10 THE CLERK: YES.

10:12AM 11 THE COURT: AND THE MOST RECENT NOTE I RECEIVED
10:12AM 12 INDICATED THAT TWO MORE WISH TO BE HEARD ABOUT TRAVEL PLANS
10:12AM 13 THAT THEY HAVE.

10:12AM 14 MR. COOPERSMITH: I'M SORRY, YOUR HONOR.

10:12AM 15 THE ADDITIONAL HARDSHIP CASES BEING EXPRESSED ARE JURORS
10:13AM 16 101 AND 26; IS THAT CORRECT?

10:13AM 17 THE COURT: THAT'S CORRECT.

10:13AM 18 MR. COOPERSMITH: OKAY. THANK YOU.

10:13AM 19 THE COURT: THAT'S WHAT I'M INFORMED.

10:13AM 20 LET ME -- I THINK -- DO WE HAVE TWO REMAINING FROM OUR
10:13AM 21 POOL, IF YOU WILL?

10:13AM 22 MR. SCHENK: YES, YOUR HONOR.

10:13AM 23 THE COURT: TWO POTENTIAL JURORS REMAINING IN OUR
10:13AM 24 POOL?

10:13AM 25 MR. COOPERSMITH: YES, YOUR HONOR.

10:13AM 1 AND I DON'T KNOW WHAT YET THE HARDSHIP OUTCOME WILL BE,
10:13AM 2 BUT WE OBJECT TO FILLING THE ALTERNATE BOX FROM THE TWO
10:13AM 3 REMAINING JURORS FROM THE POOL.

10:13AM 4 THE COURT: I HAVEN'T GOT THERE, MR. COOPERSMITH.

10:13AM 5 MR. COOPERSMITH: WELL, WE HAVE AN OBJECTION IF WE
10:13AM 6 GET THERE, AND I'LL EXPLAIN THAT.

10:13AM 7 THE COURT: YOU SHOULD WAIT YOUR TURN, THAT'S RIGHT.

10:13AM 8 MR. COOPERSMITH: I WILL DO THAT.

10:13AM 9 THE COURT: SO WHAT WE'LL DO IS WE'LL LOOK AND SEE
10:13AM 10 WHAT THE NEXT STEPS WOULD BE, AND IF THAT MEANS -- PLEASE
10:13AM 11 RECALL THAT I HAVE NOT RELEASED OUR PANEL, THE THIRD TRANCHE,
10:13AM 12 AND SO WHAT MAY HAVE TO HAPPEN, DEPENDING ON WHAT WE DO, IS
10:13AM 13 WE'LL HAVE TO CALL UP ADDITIONAL MEMBERS FROM THAT THIRD PANEL
10:14AM 14 AND ENGAGE VOIR DIRE AS TO THEM.

10:14AM 15 SO -- BUT LET'S SEE WHAT HAPPENS THIS MORNING. I COULD,
10:14AM 16 AND PERHAPS SHOULD, BRING IN EACH OF THESE JURORS INDIVIDUALLY
10:14AM 17 AND WE CAN HEAR WHAT THEIR SITUATION IS, THAT IS, 101 AND 26.

10:14AM 18 MR. COOPERSMITH: YES, YOUR HONOR.

10:14AM 19 THE COURT: WHY DON'T WE START WITH THAT?

10:14AM 20 MR. SCHENK: THANK YOU.

10:14AM 21 THE COURT: AND THEN IF THERE ARE OTHER JURORS WHO
10:14AM 22 HAVE IDENTIFIED TRAVEL PLANS, I BELIEVE THEY'VE -- AS I
10:14AM 23 REVIEWED THEIR QUESTIONNAIRES, I COULD SEE THAT THERE WERE SOME
10:14AM 24 TRAVEL THAT THEY EXPRESSED IN THEIR QUESTIONNAIRES.

10:14AM 25 131 AND 133 ARE TRAVELLERS.

10:15AM 1 OKAY. SO LET'S -- WHY DON'T WE ASK JUROR 101 TO COME UP
10:15AM 2 AND THEN WE'LL PROCEED.

10:15AM 3 MR. COOPERSMITH: THANK YOU, YOUR HONOR.

10:15AM 4 (PAUSE IN PROCEEDINGS.)

10:18AM 5 (PROSPECTIVE JUROR NUMBER 101 IS PRESENT.)

10:18AM 6 THE COURT: ALL RIGHT. THANK YOU. GOOD MORNING.
10:18AM 7 WE HAVE JUROR NUMBER 101 WITH US THIS MORNING.

10:18AM 8 PROSPECTIVE JUROR: YES.

10:18AM 9 THE COURT: I UNDERSTAND THAT YOU HAD MENTIONED THAT
10:18AM 10 YOU HAD MADE SOME COMMENTS TO OUR COURTROOM DEPUTY,
10:18AM 11 MS. ROBINSON, ABOUT YOUR SERVICE TODAY.

10:18AM 12 IS THERE SOMETHING THAT YOU'D LIKE US TO KNOW?

10:18AM 13 PROSPECTIVE JUROR: YES.

10:18AM 14 I'M IN A REALLY HOT SEASON RIGHT NOW. I'M DRIVING TWO
10:18AM 15 HOURS TO COME UP AND I NEED TO DRIVE BACK FOR TWO HOURS. IT'S
10:18AM 16 A REALLY LONG DRIVE FOR ME.

10:18AM 17 AND EVERY TIME I COME, I DON'T KNOW WHY, BUT EVERY TIME I
10:19AM 18 LEAVE MY TOWN, MY STORE ALWAYS HAS A PROBLEM. MY EMPLOYEE,
10:19AM 19 THEY CALL IN, SOMEONE IS LATE AND NOT SHOWING UP, AND IT IS A
10:19AM 20 LOT OF STRESS FOR ME. I CAN'T FOCUS JUST STAYING HERE.

10:19AM 21 THE COURT: I SEE. YOU GIVE IN CARMEL, I BELIEVE?

10:19AM 22 PROSPECTIVE JUROR: YES.

10:19AM 23 THE COURT: AND YOU MADE IT HERE ALL RIGHT THIS
10:19AM 24 MORNING?

10:19AM 25 PROSPECTIVE JUROR: YES.

10:19AM 1 THE COURT: YES.

10:19AM 2 PROSPECTIVE JUROR: I TRY. I LEFT AT 6:30.

10:19AM 3 THE COURT: OKAY. THANK YOU FOR THAT.

10:19AM 4 ANYTHING ELSE YOU WOULD LIKE ME TO KNOW?

10:19AM 5 PROSPECTIVE JUROR: NO. I DON'T WANT TO --

10:19AM 6 THE COURT: OKAY.

10:19AM 7 PROSPECTIVE JUROR: -- TO SAY A LOT OF REASON, BUT,

10:19AM 8 YEAH, THAT'S REALLY THE MAIN THING. I'M NOT HERE, YOU KNOW?

10:19AM 9 MY MIND IS NOT HERE, AND THAT'S WHY I CAN'T HELP ANYTHING WITH

10:19AM 10 THE CASE.

10:19AM 11 THE COURT: ALL RIGHT.

10:19AM 12 PROSPECTIVE JUROR: TO BE HONEST, YEAH.

10:19AM 13 THE COURT: THANK YOU. I'M GOING TO ASK THE LAWYERS

10:20AM 14 IF THEY HAVE ANY QUESTIONS FOR YOU.

10:20AM 15 PROSPECTIVE JUROR: YES.

10:20AM 16 THE COURT: MR. SCHENK?

10:20AM 17 MR. SCHENK: NOTHING FURTHER, YOUR HONOR.

10:20AM 18 MR. COOPERSMITH: NOTHING.

10:20AM 19 THE COURT: ALL RIGHT. THANK YOU. YOU CAN LEAVE

10:20AM 20 THE MICROPHONE THERE. JUST PUT IT DOWN ON THAT TABLE IN FRONT

10:20AM 21 OF YOU THERE IS FINE. IF YOU WOULD GO BACK DOWNSTAIRS, PLEASE,

10:20AM 22 AND JUST WAIT UNTIL YOU'RE NOTIFIED.

10:20AM 23 PROSPECTIVE JUROR: YES. THANK YOU.

10:20AM 24 THE COURT: THANK YOU.

10:20AM 25 AND LET'S BRING UP 26.

10:26AM 1 (PROSPECTIVE JUROR 101 IS NOT PRESENT.)

10:23AM 2 (PAUSE IN PROCEEDINGS.)

10:23AM 3 (PROSPECTIVE JUROR NUMBER 26 IS PRESENT.)

10:23AM 4 THE CLERK: JUROR NUMBER 26 IS HERE.

10:23AM 5 THE COURT: ALL RIGHT. THANK YOU. GOOD MORNING.

10:23AM 6 JUROR NUMBER 26, GOOD MORNING.

10:23AM 7 PROSPECTIVE JUROR: YES, GOOD MORNING.

10:23AM 8 THE COURT: I'M GOING TO ASK YOU TO SPEAK INTO THE

10:23AM 9 MICROPHONE IF YOU CAN. I THINK IT'S ON. BUT HOLD IT UP TO

10:23AM 10 YOUR MOUTH WHEN YOU SPEAK.

10:23AM 11 PROSPECTIVE JUROR: OKAY.

10:23AM 12 THE COURT: YES. MY COURTROOM DEPUTY INFORMED US

10:23AM 13 THAT YOU WANTED TO SPEAK TO THE COURT ABOUT YOUR SERVICE?

10:23AM 14 PROSPECTIVE JUROR: YES.

10:23AM 15 THE COURT: YES, WHAT IS IT THAT YOU WOULD LIKE ME

10:23AM 16 TO KNOW?

10:24AM 17 PROSPECTIVE JUROR: YEAH, BECAUSE I HAVE A FULL-TIME

10:24AM 18 JOB RIGHT NOW, AND I DON'T WANT TO DAMAGE MY JOB. I DO HAVE A

10:24AM 19 PARENT, MY MOM, DURING THE APRIL TIMEFRAME.

10:24AM 20 SO, YEAH, IF I CAN, YOU KNOW, EXCUSE MYSELF.

10:24AM 21 THE COURT: SO YOU DON'T WANT TO INTERRUPT YOUR JOB?

10:24AM 22 PROSPECTIVE JUROR: YEAH.

10:24AM 23 THE COURT: OKAY. AND I'M SORRY, WHAT DID YOU SAY

10:24AM 24 WITH YOUR -- SOMETHING WITH YOUR MOTHER?

10:24AM 25 PROSPECTIVE JUROR: OH, YES. I DO HAVE A PLAN TO

10:24AM 1 VISIT MY MOM BECAUSE MY MOM IS 91 YEARS OLD, YEAH, AND SHE'S
10:24AM 2 EXPECTING TO SEE ME.

10:24AM 3 THE COURT: WELL, WE WILL BE IN SESSION, AS I TOLD
10:25AM 4 YOU, THREE DAYS A WEEK TO BE AT WORK. WE'LL PLAN TO END AT
10:25AM 5 ABOUT 3:00 P.M., SO YOU WOULD ALSO HAVE AN OPPORTUNITY TO DO
10:25AM 6 WORK.

10:25AM 7 HAVE YOU BEEN WORKING REMOTELY DURING THE LAST PERIOD OF
10:25AM 8 TIME?

10:25AM 9 PROSPECTIVE JUROR: YOU MEAN DURING COVID-19?

10:25AM 10 THE COURT: YES.

10:25AM 11 PROSPECTIVE JUROR: YES, WE DO.

10:25AM 12 HOWEVER, MY JOB IS ONLY TAKING CARE OF MYSELF, AND EVEN
10:25AM 13 DURING COVID-19 I HAVE TO DO THE DAY AND NIGHT. THAT'S WHY
10:25AM 14 LAST WEEK I WASN'T EXPECTING TO TAKE SO LONG, SO I HAVE TO WORK
10:25AM 15 UNTIL 2:00 A.M. IN THE MORNING.

10:25AM 16 LIKE OVER THE WEEKEND I GOT A NOTICE AND I COULDN'T SLEEP
10:25AM 17 WELL BECAUSE I DON'T KNOW HOW TO TELL MY CUSTOMER, TELL MY
10:25AM 18 BOSS, YOU KNOW, I NEED TO ATTEND THIS COURTROOM. YEAH.

10:25AM 19 THE COURT: I SEE.

10:25AM 20 PROSPECTIVE JUROR: I WASN'T EXPECTING IT WOULD TAKE
10:25AM 21 THAT LONG, YEAH.

10:25AM 22 I KNOW IT'S MY OBLIGATION, YOU KNOW, IS THAT ONCE A WEEK
10:25AM 23 OR ONLY SOMETIME, YOU KNOW, IN A WHILE, I DON'T MIND.

10:26AM 24 MAYBE YOU CAN EXTEND MY DUTY UNTIL A COUPLE OF YEARS LATER
10:26AM 25 AFTER I RETIRE.

10:26AM 1 THE COURT: OKAY. I SEE. ALL RIGHT. THANK YOU.

10:26AM 2 ANY QUESTIONS, MR. SCHENK?

10:26AM 3 MR. SCHENK: NO. THANK YOU, YOUR HONOR.

10:26AM 4 THE COURT: MR. COOPERSMITH?

10:26AM 5 MR. COOPERSMITH: NO, YOUR HONOR. THANK YOU.

10:26AM 6 THE COURT: ALL RIGHT. THANK YOU.

10:26AM 7 IF YOU WOULD GO BACK DOWNSTAIRS, PLEASE. IF YOU COULD

10:26AM 8 LEAVE THE MICROPHONE THERE RIGHT ON THAT TABLE IN FRONT OF YOU,

10:26AM 9 THAT'S FINE. THANK YOU.

10:26AM 10 JUROR: THANK YOU SO MUCH.

10:26AM 11 (PROSPECTIVE JUROR 26 IS NOT PRESENT.)

10:26AM 12 THE COURT: LET'S ASK JUROR 131 TO COME UP, PLEASE,

10:26AM 13 AND THEN WE'LL HAVE 133.

10:27AM 14 (PAUSE IN PROCEEDINGS.)

10:27AM 15 THE COURT: LET ME JUST SAY I'VE REVIEWED THE

10:27AM 16 QUESTIONNAIRES OF 131 AND 133, AND THEY ARE NOT THE

10:27AM 17 QUESTIONNAIRES THAT I WAS REFERENCING EARLIER WHEN I SAID I SAW

10:27AM 18 TRAVEL INFORMATION.

10:27AM 19 THERE'S NO INFORMATION ON EITHER OF THESE QUESTIONNAIRES

10:27AM 20 REGARDING TRAVEL. BUT PERHAPS COUNSEL, IF YOU HAVE REVIEWED

10:28AM 21 THEM, YOU CAN -- IF YOU SEE SOMETHING, I'M HAPPY TO HEAR FROM

10:28AM 22 YOU.

10:28AM 23 (PAUSE IN PROCEEDINGS.)

10:28AM 24 MR. SCHENK: YOUR HONOR, IF THE COURT LOOKS AT THE

10:28AM 25 26TH PAGE, ONE OF THE ADDITIONAL PAGES FOR JUROR 133, THERE'S

10:28AM 1 SOME HANDWRITTEN NOTES ABOUT TRAVEL.

10:28AM 2 THE COURT: THANK YOU. OH, YES.

10:28AM 3 (PAUSE IN PROCEEDINGS.)

10:29AM 4 THE CLERK: JUROR 131 IS APPROACHING.

10:29AM 5 (PROSPECTIVE JUROR NUMBER 131 IS PRESENT.)

10:29AM 6 PROSPECTIVE JUROR: GOOD MORNING.

10:29AM 7 THE COURT: ALL RIGHT. GOOD MORNING.

10:29AM 8 THIS IS JUROR 131. GOOD MORNING.

10:29AM 9 PROSPECTIVE JUROR: GOOD MORNING.

10:29AM 10 THE COURT: AND OUR COURTROOM DEPUTY INFORMS ME THAT

10:29AM 11 YOU WANTED TO LET US KNOW ABOUT SOME TRAVEL?

10:29AM 12 PROSPECTIVE JUROR: YEAH, I SIGNED UP FOR A

10:29AM 13 CONFERENCE IN APRIL, APRIL 11TH THROUGH 14TH IN PORTLAND.

10:29AM 14 THE COURT: I'M SORRY, WHERE IS IT?

10:29AM 15 PROSPECTIVE JUROR: IT'S AN INTERNATIONAL CONFERENCE

10:29AM 16 ABOUT TIMBER STRUCTURES. I'M AN ARCHITECT AND I'M WORKING ON

10:30AM 17 TIMBER BUILDINGS.

10:30AM 18 THE COURT: SO THIS IS AN ARCHITECTURAL CONFERENCE?

10:30AM 19 PROSPECTIVE JUROR: YES.

10:30AM 20 THE COURT: AND I'M SORRY, WHERE IS IT?

10:30AM 21 PROSPECTIVE JUROR: IT'S IN PORTLAND.

10:30AM 22 THE COURT: AND IT'S ON APRIL 11TH.

10:30AM 23 PROSPECTIVE JUROR: 11 THROUGH 14.

10:30AM 24 THE COURT: I SEE.

10:30AM 25 AND YOU'LL BE BACK ON THE 14TH OR THE 15TH?

10:30AM 1 PROSPECTIVE JUROR: 15TH. I'M GONE THROUGH THE 11TH
10:30AM 2 AND 14TH.

10:30AM 3 THE COURT: OKAY. AND ARE YOU ON A PANEL? ARE YOU
10:30AM 4 PRESENTING?

10:30AM 5 PROSPECTIVE JUROR: NO, NO.

10:30AM 6 SO I WAS ASKING IF I NEED TO RESCHEDULE THAT AND WHAT ARE
10:30AM 7 MY OPTIONS.

10:30AM 8 THE COURT: I SEE. OKAY.

10:30AM 9 IS THAT SOMETHING THAT YOU COULD DO? I REALIZE YOU WOULD
10:30AM 10 BE DISAPPOINTED NOT GOING TO THE CONFERENCE, BUT IS THAT
10:30AM 11 SOMETHING THAT YOU COULD RESCHEDULE?

10:30AM 12 PROSPECTIVE JUROR: YES, I THINK I CAN RESCHEDULE.
10:30AM 13 I'LL HAVE TO FIND SOMEONE IN MY FIRM TO TAKE MY PLACE.

10:31AM 14 THE COURT: I SEE. OKAY.

10:31AM 15 THANK YOU. I'M GOING TO ASK THESE LAWYERS IF THEY HAVE
10:31AM 16 QUESTIONS.

10:31AM 17 PROSPECTIVE JUROR: AND I ALSO HAVE TICKETS TO GO TO
10:31AM 18 EUROPE TO VISIT MY PARENTS.

10:31AM 19 THE COURT: YES.

10:31AM 20 PROSPECTIVE JUROR: END OF JUNE, JUNE 25TH, OR 24TH.

10:31AM 21 THE COURT: JUNE 24TH. OKAY.

10:31AM 22 PROSPECTIVE JUROR: AND THAT'S FOR FOUR WEEKS.

10:31AM 23 THE COURT: FOUR WEEKS. OKAY.

10:31AM 24 PROSPECTIVE JUROR: OKAY. THANKS.

10:31AM 25 THE COURT: LET ME ASK THE LAWYERS IF THEY HAVE

10:31AM 1 QUESTIONS BEFORE YOU LEAVE.

10:31AM 2 MR. SCHENK, ANYTHING FURTHER?

10:31AM 3 MR. SCHENK: NOTHING FURTHER.

10:31AM 4 MR. COOPERSMITH: NO, YOUR HONOR. THANK YOU.

10:31AM 5 THE COURT: OKAY. YOU COULD JUST LEAVE THE

10:31AM 6 MICROPHONE ON THE TABLE THERE.

10:31AM 7 PROSPECTIVE JUROR: ALL RIGHT.

10:31AM 8 THE COURT: AND 133.

10:26AM 9 (PROSPECTIVE JUROR 131 IS NOT PRESENT.)

10:32AM 10 (PAUSE IN PROCEEDINGS.)

10:32AM 11 THE COURT: I'VE JUST BEEN HANDED ANOTHER NOTE, AND

10:32AM 12 IT'S JUROR 134 SAYS HE HAS A HARDSHIP, WORK. SO WE'LL SPEAK

10:33AM 13 WITH THIS JUROR AS WELL.

10:34AM 14 (PAUSE IN PROCEEDINGS.)

10:34AM 15 THE CLERK: JUROR 133 HAS ARRIVED.

10:34AM 16 (PROSPECTIVE JUROR NUMBER 133 IS PRESENT.)

10:34AM 17 THE COURT: THANK YOU. GOOD MORNING. YOU'RE JUROR

10:34AM 18 133?

10:34AM 19 PROSPECTIVE JUROR: YES.

10:34AM 20 THE COURT: I UNDERSTAND YOU WANTED TO GIVE US

10:34AM 21 INFORMATION ABOUT, IS IT TRAVEL PLANS THAT YOU HAVE?

10:34AM 22 PROSPECTIVE JUROR: YES. SO IT'S, LIKE, THE 24TH --

10:34AM 23 IT'S THE THURSDAY BEFORE THE WEEKEND OF THE 26TH AND 27TH, AND

10:34AM 24 THEN THE TUESDAY.

10:34AM 25 THE COURT: EXCUSE ME. CAN YOU TELL US WHAT MONTH

10:35AM 1 YOU'RE SPEAKING OF?

10:35AM 2 PROSPECTIVE JUROR: THIS ONE, MARCH.

10:35AM 3 THE COURT: MARCH, OKAY.

10:35AM 4 PROSPECTIVE JUROR: YEAH.

10:35AM 5 THE COURT: THE 24TH?

10:35AM 6 PROSPECTIVE JUROR: THROUGH THE TUESDAY AFTER THAT

10:35AM 7 WEEKEND.

10:35AM 8 THE CLERK: IT'S THE 29TH, YOUR HONOR.

10:35AM 9 THE COURT: THE 29TH, YES.

10:35AM 10 AND TELL US ABOUT THAT TRAVEL.

10:35AM 11 PROSPECTIVE JUROR: ONE OF MY REALLY GOOD FRIENDS IS

10:35AM 12 GETTING MARRIED. I'M IN HER BRIDAL PARTY AND HER WEDDING IS ON

10:35AM 13 THE 27TH, BUT THERE'S THINGS THAT I NEED TO BE THERE FOR, LIKE

10:35AM 14 THE REHEARSAL DINNER AND EVERYTHING ON THE 26TH.

10:35AM 15 THE COURT: AND THE WEDDING IS ON THE --

10:35AM 16 PROSPECTIVE JUROR: -- 27TH.

10:35AM 17 THE COURT: I SEE.

10:35AM 18 AND THEN THE 28TH AND 29TH WERE?

10:35AM 19 PROSPECTIVE JUROR: SO I'M FLYING INTO ATLANTA AND

10:35AM 20 WE HAVE TO DRIVE TO ASHEVILLE, SO WE'RE USING FRIDAY TO DRIVE,

10:35AM 21 AND THEN MONDAY TO DRIVE, AND THEN WE'RE FLYING OUT THE DAYS ON

10:35AM 22 EITHER END OF THAT.

10:35AM 23 THE COURT: YOU'RE FLYING OUT ON THE 29TH?

10:35AM 24 PROSPECTIVE JUROR: I'M FLYING OUT ON THE

10:36AM 25 THURSDAY -- FLYING OUT OF CALIFORNIA ON THE THURSDAY AND FLYING

10:36AM 1 BACK ON THE TUESDAY.

10:36AM 2 THE COURT: I SEE. SO YOU'LL BE BACK ON THE 30TH?

10:36AM 3 PROSPECTIVE JUROR: YES.

10:36AM 4 THE COURT: OKAY. AND WAS THERE ANOTHER TRIP?

10:36AM 5 PROSPECTIVE JUROR: NO, THAT'S IT.

10:36AM 6 THE COURT: THAT'S IT. OKAY.

10:36AM 7 ANYTHING ELSE YOU WANT US TO KNOW?

10:36AM 8 PROSPECTIVE JUROR: NO.

10:36AM 9 THE COURT: OKAY. THANK YOU.

10:36AM 10 ANY QUESTIONS, MR. SCHENK?

10:36AM 11 MR. SCHENK: NO. THANK YOU.

10:36AM 12 THE COURT: MR. COOPERSMITH?

10:36AM 13 MR. COOPERSMITH: NO, YOUR HONOR.

10:36AM 14 THE COURT: ALL RIGHT. THANK YOU VERY MUCH. YOU

10:36AM 15 CAN GO BACK DOWNSTAIRS, PLEASE. AND JUST LEAVE THE MICROPHONE

10:36AM 16 ON THAT TABLE IN FRONT OF YOU THERE. THAT WOULD BE GREAT.

10:36AM 17 THANK YOU.

10:36AM 18 (PROSPECTIVE JUROR NUMBER 133 IS NOT PRESENT.)

10:36AM 19 THE COURT: AND THEN 134.

10:36AM 20 THE CLERK: 142 PHONED IN. SHE'S ON HER WAY.

10:36AM 21 THE COURT: OKAY. GREAT.

10:37AM 22 134 I BELIEVE IS ALTERNATE NUMBER 1.

10:37AM 23 (PAUSE IN PROCEEDINGS.)

10:38AM 24 (PROSPECTIVE JUROR NUMBER 134 IS PRESENT.)

10:39AM 25 THE COURT: ALL RIGHT. I BELIEVE JUROR NUMBER 134

10:39AM 1 IS WITH US.

10:39AM 2 IF YOU COULD COME FORWARD, SIR, WE'LL HAND YOU A
10:39AM 3 MICROPHONE.

10:39AM 4 GOOD MORNING.

10:39AM 5 PROSPECTIVE JUROR: GOOD MORNING, SIR.

10:39AM 6 THE COURT: AND I UNDERSTAND THAT YOU WANTED TO BE
10:39AM 7 HEARD ABOUT SOMETHING?

10:39AM 8 PROSPECTIVE JUROR: I JUST WANT TO SAY, YOU KNOW --

10:39AM 9 THE COURT: CAN YOU KEEP THE MICROPHONE UP?

10:39AM 10 PROSPECTIVE JUROR: YEAH. I JUST WANT TO SAY I DID
10:39AM 11 FILL OUT THE QUESTIONNAIRE, BUT MOST OF THEM I DIDN'T EVEN
10:39AM 12 UNDERSTAND. I DIDN'T HAVE A CHANCE TO SEE IF I CAN BE EXCUSED
10:39AM 13 BECAUSE I NEVER GET ANY QUESTION ABOUT THAT.

10:39AM 14 AND THE PROBLEM IS THAT TO ENJOY THIS, I HAVE A FAMILY,
10:39AM 15 DROP OFF THE KIDS, PICK THEM UP FROM SCHOOL, AND I'M WORKING IN
10:40AM 16 THE BUILDING AND I'M THE MAINTENANCE BUILDING WHO REALLY TAKES
10:40AM 17 CARE OF STUFF LIKE YOU MENTIONED THE OTHER DAY, THE A.C., AND
10:40AM 18 IT'S NOT WORKING. SO WHO IS GOING TO BE TAKING CARE OF THAT?
10:40AM 19 I'M SHORT WITH STAFF.

10:40AM 20 THE COURT: AND HOW MANY STAFF DO YOU HAVE, SIR?

10:40AM 21 PROSPECTIVE JUROR: I THINK I HAVE -- I HAVE THREE
10:40AM 22 GUYS.

10:40AM 23 THE COURT: THREE GUYS. AND THEY WORK UNDER YOU?

10:40AM 24 PROSPECTIVE JUROR: YEAH, THEY WORK, LIKE, MORNING
10:40AM 25 AND AFTERNOON SHIFT.

10:40AM 1 THE COURT: RIGHT. I SEE.

10:40AM 2 AND ARE YOU HIRING ADDITIONAL STAFF?

10:40AM 3 PROSPECTIVE JUROR: TRYING TO, BUT WITH THE

10:40AM 4 SITUATION RIGHT NOW, NOBODY WANTS TO WORK.

10:40AM 5 THE COURT: UH-HUH, I SEE.

10:40AM 6 OKAY. AND YOU PICK UP YOUR CHILDREN, YOU TAKE THEM, I

10:40AM 7 THINK?

10:40AM 8 PROSPECTIVE JUROR: CORRECT, CORRECT.

10:40AM 9 THE COURT: AND WHO ELSE HELPS YOU WITH THAT?

10:40AM 10 PROSPECTIVE JUROR: MY WIFE, BUT SHE'S WORKING, TOO.

10:40AM 11 WE TRIED TO SCHEDULE, LIKE, EITHER I'M DROPPING OFF AND

10:40AM 12 SHE PICKS THEM UP, AND I DROP THEM OFF AND SHE PICKS THEM UP.

10:41AM 13 SO --

10:41AM 14 THE COURT: AND WHAT ARE THE HOURS OF YOUR

10:41AM 15 CHILDCARE?

10:41AM 16 PROSPECTIVE JUROR: I DON'T HAVE CHILDCARE. THEY'RE

10:41AM 17 IN SCHOOL.

10:41AM 18 THE COURT: YES, WHAT ARE THE HOURS OF THAT?

10:41AM 19 PROSPECTIVE JUROR: THE DAUGHTER IS AT 2:00 O'CLOCK,

10:41AM 20 AND THE SON IS AT 2:30.

10:41AM 21 THE COURT: OKAY. AND YOUR WIFE COLLECTS THEM, SHE

10:41AM 22 PICKS THEM UP?

10:41AM 23 PROSPECTIVE JUROR: LIKE I SAID, NOT EVERY DAY. HER

10:41AM 24 SCHEDULE IS DIFFERENT. LIKE, I'M THE ONLY GUY WHO CAN STEP OUT

10:41AM 25 FROM MY WORK AND PICK THEM UP AND BRING THEM HOME AND UNTIL SHE

10:41AM 1 COMES BACK TO STAY WITH THEM.

10:41AM 2 THE COURT: AND WHAT TIME DOES SHE GET OFF WORK?

10:41AM 3 PROSPECTIVE JUROR: SHE WORKS UNTIL, LIKE, IN THE

10:41AM 4 MORNING AND WORKS AFTERNOON, TOO, SHIFTS. SO WE TRY TO MAKE IT

10:41AM 5 BE TO FIT PERFECTLY.

10:41AM 6 THE COURT: SURE. IT SOUNDS LIKE HER SCHEDULE CAN

10:41AM 7 BE ADJUSTED?

10:41AM 8 PROSPECTIVE JUROR: BUT HER SCHEDULE, THAT'S FOR HER

10:41AM 9 BOSS. SHE HAS TO TALK TO HIM.

10:41AM 10 THE COURT: RIGHT.

10:41AM 11 PROSPECTIVE JUROR: YEAH.

10:41AM 12 THE COURT: IS THERE SOME FLEXIBILITY THERE?

10:41AM 13 PROSPECTIVE JUROR: I'M NOT SURE.

10:42AM 14 THE COURT: WHAT DOES SHE DO?

10:42AM 15 PROSPECTIVE JUROR: SHE WORKS AT KAISER.

10:42AM 16 THE COURT: AT THE HOSPITAL?

10:42AM 17 PROSPECTIVE JUROR: YEAH.

10:42AM 18 THE COURT: IN WHAT CAPACITY?

10:42AM 19 PROSPECTIVE JUROR: SHE -- WHAT DO YOU MEAN?

10:42AM 20 THE COURT: WHAT DOES SHE DO THERE?

10:42AM 21 PROSPECTIVE JUROR: SHE'S A MEDICAL ASSISTANT.

10:42AM 22 THE COURT: I SEE. OKAY.

10:42AM 23 AND YOUR CHILDREN ARE IN ELEMENTARY SCHOOL?

10:42AM 24 PROSPECTIVE JUROR: YES.

10:42AM 25 THE COURT: AND THEY HAVE AFTER CARE AT THE SCHOOL?

10:42AM 1 PROSPECTIVE JUROR: THEY DO, BUT --

10:42AM 2 THE COURT: IF WE, IF WE FINISH AT 3:00 P.M., THAT

10:42AM 3 WOULD ALLOW YOU AN OPPORTUNITY TO COLLECT THEM?

10:42AM 4 PROSPECTIVE JUROR: BUT THE DAYCARE, SOMEBODY HAS TO

10:42AM 5 PAY FOR IT. IT'S NOT FREE.

10:42AM 6 THE COURT: I SEE. IT'S A PUBLIC SCHOOL?

10:42AM 7 PROSPECTIVE JUROR: YES.

10:42AM 8 THE COURT: AND THEY MAKE YOU PAY FOR THAT AS WELL?

10:42AM 9 PROSPECTIVE JUROR: OH, YEAH, AFTER 3:00 TO 6:00, IF

10:42AM 10 YOU WANT TO KEEP YOUR KIDS THERE, IT COSTS YOU MONEY.

10:42AM 11 THE COURT: I SEE.

10:42AM 12 PROSPECTIVE JUROR: YEAH.

10:42AM 13 THE COURT: OKAY. ANYTHING ELSE YOU WANT ME TO

10:42AM 14 KNOW?

10:42AM 15 PROSPECTIVE JUROR: NO. I JUST WANT TO, YOU KNOW,

10:43AM 16 SEE -- YEAH.

10:43AM 17 THE COURT: OKAY.

10:43AM 18 ANY QUESTIONS, MR. SCHENK?

10:43AM 19 MR. SCHENK: NO. THANK YOU.

10:43AM 20 THE COURT: MR. COOPERSMITH?

10:43AM 21 MR. COOPERSMITH: NO, YOUR HONOR.

10:43AM 22 THE COURT: THANK YOU, SIR. YOU CAN LEAVE THE

10:43AM 23 MICROPHONE THERE.

10:43AM 24 THANK YOU FOR LETTING US KNOW THIS.

10:43AM 25 PROSPECTIVE JUROR: NO PROBLEM.

(PROSPECTIVE JUROR NUMBER 134 IS NOT PRESENT.)

THE COURT: THE RECORD SHOULD REFLECT THAT JUROR
NUMBER 134 HAS LEFT THE COURTROOM. THERE ARE NO ADDITIONAL
REQUESTS AS OF NOW.

I AM INFORMED THAT JUROR NUMBER 142 IS ON THEIR WAY.

ANY COMMENT FROM COUNSEL REGARDING THESE FOUR INDIVIDUALS?

MR. SCHENK: YOUR HONOR, MAY I HAVE JUST ONE MOMENT?

THE COURT: YES. OF COURSE.

(DISCUSSION OFF THE RECORD.)

THE COURT: COUNSEL.

MR. SCHENK: THANK YOU VERY MUCH FOR THE TIME,
YOUR HONOR.

LET ME START WITH THE TWO THAT I DO NOT THINK THAT WE DO
NOT NEED TO EXCUSE. THE FIRST IS JUROR 131, THE ARCHITECT WITH
A CONFERENCE IN PORTLAND. SHE SEEMED TO INDICATE THAT HER
ATTENDANCE WAS NOT MANDATORY, THERE WOULD BE OTHERS AT HER
PLACE OF EMPLOYMENT THAT COULD TAKE HER PLACE.

SO I DON'T THINK THAT WE NEED TO EXCUSE 131 FROM SERVICE.

THE COURT: MR. COOPERSMITH.

MR. COOPERSMITH: THAT STRIKES ME AS CORRECT,
YOUR HONOR.

THE COURT: OKAY.

MR. SCHENK: 133, THE JUROR WITH A WEDDING, I THINK
IN I THINK SHE SAID ASHEVILLE, I ALSO DON'T THINK THAT WE NEED
TO EXCUSE JUROR 133 FROM SERVICE.

10:48AM 1 IF SHE ATTENDED AS SHE CURRENTLY PLANS, ATTENDS THE
10:48AM 2 WEDDING AS SHE CURRENTLY PLANS, I THINK THAT WOULD CAUSE US THE
10:48AM 3 NEED TO GO DARK ON TWO TRIAL DAYS, FRIDAY AND TUESDAY.

10:48AM 4 IT SEEMS TO ME THAT HER TRIP COULD BE SHORTENED A LITTLE
10:48AM 5 BIT AND MAYBE WE CAN CAPTURE ONE OF THOSE DAYS. I THINK THE
10:48AM 6 WEDDING WAS SET ON A SUNDAY.

10:48AM 7 SHE COULD TRAVEL MAYBE ON MONDAY SO THAT SHE WOULD BE BACK
10:48AM 8 IN TIME FOR TRIAL ON TUESDAY, EVEN IF WE STAYED DARK OR WENT
10:48AM 9 DARK ON THE 25TH. I THINK SHE WAS PLANNING TO LEAVE ON
10:48AM 10 THURSDAY, THE 24TH.

10:48AM 11 IT WOULD SEEM TO ME THAT WE WOULD CAPTURE AT LEAST ONE OF
10:49AM 12 THOSE TWO TRIAL DAYS, BUT THE WORST CASE SCENARIO IS THAT WE
10:49AM 13 LOSE TWO TRIAL DAYS.

10:49AM 14 THAT'S CERTAINLY NOT THE GOVERNMENT'S PREFERENCE IN THIS
10:49AM 15 FIRST MONTH, BUT I DON'T THINK WE NEED TO EXCUSE 133 EITHER,
10:49AM 16 AND WE CAN WORK WITH THE SCHEDULE ONE WAY OR ANOTHER.

10:49AM 17 THE COURT: OKAY. THANK YOU.

10:49AM 18 MR. COOPERSMITH: I AGREE, YOUR HONOR.

10:49AM 19 THE COURT: OKAY.

10:49AM 20 MR. SCHENK: SO THAT THEN LEAVES US THE REMAINING
10:49AM 21 THREE, 101, 26, AND 134.

10:49AM 22 TO BE FRANK, I'M INCLINED TO BE A LITTLE BIT MORE LIBERAL
10:49AM 23 WITH EXCUSING IF WE HAVE TO BRING IN ANOTHER PANEL. THERE ARE
10:49AM 24 SOME OF THE REQUESTS, OR EXCUSES, THAT THE JURORS PROVIDED THAT
10:49AM 25 I THINK WE IN SOME INSTANCES MIGHT OPPOSE.

10:49AM 1 BUT IF WHAT WE'RE LEFT WITH IS THE NEED TO BRING IN
10:49AM 2 ANOTHER PANEL, I'M NOT SURE THAT SPLITTING HAIRS REALLY BECOMES
10:49AM 3 NECESSARY.

10:49AM 4 I CAN GO THROUGH THEM QUICKLY. 101, SHE SAID THAT HER
10:50AM 5 MIND ISN'T HERE. THAT PHRASE OBVIOUSLY TROUBLES ME, AND I'M
10:50AM 6 SURE EVERYBODY ELSE. SHE WOKE UP AT 6:30 IN THE MORNING, AND
10:50AM 7 WE'RE STARTING AT 10:00 TODAY. MOST DAYS WE WOULD START AT
10:50AM 8 9:00. I WOULD HOPE THAT THAT WOULDN'T MEAN THAT SHE WOULD HAVE
10:50AM 9 TO WAKE UP AN HOUR EARLIER ON THOSE DAYS.

10:50AM 10 IT'S CLEAR THAT SHE EVEN MADE STATEMENTS ABOUT HER WORK
10:50AM 11 OBLIGATIONS DURING THE VOIR DIRE PROCESS LAST WEEK, AND IT
10:50AM 12 SEEMS THAT HER MIND IS ELSEWHERE.

10:50AM 13 THIS DOES SEEM, SORT OF FROM WHAT SHE WAS SAYING, HER
10:50AM 14 DEMEANOR, AND IT IS WEIGHING ON HER TO COME UP TO SAN JOSE FROM
10:50AM 15 CARMEL, EVEN THREE DAYS A WEEK.

10:50AM 16 I CAN PAUSE ON THAT OR GO THROUGH THE REMAINING QUICKLY.

10:50AM 17 THE COURT: SURE. WHY DON'T YOU GO THROUGH YOUR
10:50AM 18 THOUGHTS AND WE'LL ASK MR. COOPERSMITH HIS THOUGHTS.

10:50AM 19 MR. SCHENK: NUMBER 26 DESCRIBES THE WORK HARDSHIPS.
10:50AM 20 IN FACT, JUST PARTICIPATING IN THE SELECTION PROCESS LAST WEEK
10:51AM 21 SEEMS TO HAVE MADE HER STAY UP UNTIL 2:00 IN THE MORNING TO
10:51AM 22 MAKE UP FOR MISSED WORK TIME, AND IF HER WORK DEMANDS ARE SUCH
10:51AM 23 THAT SHE HAS THAT KIND OF TRADEOFF THROUGHOUT OUR TRIAL, SHE'S
10:51AM 24 GOING TO FALL FURTHER AND FURTHER BEHIND, SHE'S GOING TO STAY
10:51AM 25 UP LATER AND LATER, AND I ASSUME THAT AT SOME POINT IT IS GOING

10:51AM 1 TO CATCH UP WITH HER FATIGUE AS SHE SITS THROUGH OUR TRIAL.

10:51AM 2 SO I SORT OF HAVE A CONCERN ABOUT THE TRADE-OFF THAT SHE
10:51AM 3 HERSELF WILL BE MAKING, DAYTIME AND NIGHTTIME, PROBABLY WORKING
10:51AM 4 AT BOTH ENDS, OR BURNING THE CANDLE ON BOTH ENDS.

10:51AM 5 AND THEN FINALLY, 134. I REMAINED A LITTLE CONFUSED ABOUT
10:51AM 6 WHAT HIS CHILD PICKUP OPTIONS ARE. IT SEEMS THAT HIS WIFE'S
10:51AM 7 SCHEDULE IS LESS PREDICTABLE AND, THEREFORE, THEY AT LEAST RELY
10:51AM 8 ON HIM SOMETIMES TO PICK UP THE KIDS.

10:51AM 9 AND OUR TRIAL DAY ON THE THREE DAYS A WEEK THAT WE PLAN TO
10:52AM 10 MEET IS AFTER HIS CHILDREN GET OUT OF SCHOOL.

10:52AM 11 SO IF THERE'S A DAY WHEN HIS WIFE IS UNAVAILABLE, WE WOULD
10:52AM 12 HAVE TO END EARLY IN ORDER FOR HIM TO MEET HIS CHILDCARE
10:52AM 13 OBLIGATIONS.

10:52AM 14 AND WHAT WE DON'T KNOW IS HOW OFTEN WOULD THAT HAPPEN?
10:52AM 15 WOULD IT HAPPEN ONCE A WEEK OR SEVERAL TIMES A WEEK, OR ONCE
10:52AM 16 EVERY FEW WEEKS?

10:52AM 17 AND BECAUSE THERE'S A LITTLE BIT OF UNCERTAINTY THERE, I'M
10:52AM 18 NOT SURE THAT HE NEEDS TO BE EXCUSED, THOUGH I DO THINK IF
10:52AM 19 WE -- IF OUR SOLUTION TO EXCUSING THE FIRST TWO, IF THE COURT
10:52AM 20 WERE TO AGREE WITH THE GOVERNMENT ON 101 AND 26, IT SEEMS WE
10:52AM 21 MIGHT BE AVOIDING A CONFLICT OR A PROBLEM BY ALSO EXCUSING 134.

10:52AM 22 SO I SUPPOSE THAT THE GOVERNMENT'S RECOMMENDATION WOULD BE
10:52AM 23 THAT WE EXCUSE THOSE THREE JURORS SINCE IT SEEMS THAT THE
10:52AM 24 SOLUTION WE HAVE TO THAT IS BURDENSOME, BUT NO MORE BURDENSOME
10:53AM 25 FOR EACH ADDITIONAL JUROR THAT WE EXCUSE. BY EXCUSING ONE

10:53AM 1 JUROR IT MAY BE BURDENSOME, AND AS A RESULT I THINK IT WOULD
10:53AM 2 MAKE SENSE TO EXCUSE THOSE THREE.

10:53AM 3 BUT I ALSO -- I'M NOT CERTAIN ABOUT THE RECOMMENDATION I'M
10:53AM 4 MAKING, SO I WOULD INVITE FEEDBACK FROM MR. COOPERSMITH OR THE
10:53AM 5 COURT.

10:53AM 6 THE COURT: THANK YOU.

10:53AM 7 MR. COOPERSMITH: THANK YOU, YOUR HONOR.

10:53AM 8 BEFORE I GET TO THOSE THREE, I JUST WANT TO NOTE ONE OTHER
10:53AM 9 THING ABOUT 131 THAT WE DIDN'T MENTION WAS THAT SHE ALSO SAID
10:53AM 10 THAT SHE WAS GOING TO EUROPE, I THINK SHE SAID THE DAY WAS
10:53AM 11 JUNE 24TH, AND THIS IS THE ARCHITECT WHO HAD THE CONFERENCE.

10:53AM 12 AND I DON'T KNOW THAT THE TRIAL WILL STILL BE GOING ON ON
10:53AM 13 JUNE 24TH, BUT THEN YOU THINK ABOUT DELIBERATIONS AND OBVIOUSLY
10:53AM 14 WE DON'T KNOW EXACTLY.

10:53AM 15 SO I THINK IT'S FINE. I MEAN, SHE WOULD JUST HAVE TO BE
10:53AM 16 TOLD THAT SHE WOULDN'T BE ABLE TO GO TO EUROPE IF SHE WAS STILL
10:53AM 17 DELIBERATING.

10:53AM 18 I DON'T THINK I WOULD WANT A SITUATION WHERE A SEATED
10:53AM 19 JUROR IN THE 12 ALL OF A SUDDEN HAS TO LEAVE, YOU KNOW, BEFORE
10:53AM 20 DELIBERATIONS WHEN WE ALREADY KNOW THAT, RIGHT?

10:53AM 21 OKAY. SO THAT IS ONE ADDITIONAL THING ABOUT 131.

10:54AM 22 TURNING TO THESE OTHER THREE, YOU KNOW, THEY ALL OBVIOUSLY
10:54AM 23 HAVE BUSY LIVES AND HAVE ISSUES. I DEFER TO THE COURT. I
10:54AM 24 THINK MR. SCHENK ARTICULATED WHAT THEIR REASONS WERE VERY WELL.

10:54AM 25 WE CERTAINLY DON'T WANT JURORS WHO ARE HERE AND ARE

10:54AM 1 UNHAPPY AND CAN'T CONCENTRATE, YOU KNOW, AS MR. SCHENK
10:54AM 2 EXPLAINED.

10:54AM 3 I THINK IF YOU DISMISSED ALL THREE, YOUR HONOR, I DON'T
10:54AM 4 KNOW THAT THERE WOULD BE ANY OTHER SOLUTION OTHER THAN CALLING
10:54AM 5 THE THIRD PANEL, UNLESS WE WENT WITH LESS ALTERNATES. I
10:54AM 6 SUPPOSE WE COULD DO THAT.

10:54AM 7 BUT, YOU KNOW, I GUESS WHAT I'LL SAY IS IT IS WHAT IT IS,
10:54AM 8 AND, YOU KNOW, WHAT WE DON'T WANT TO HAVE TO DO IS -- WELL, I
10:54AM 9 THINK I'LL JUST WAIT FOR FURTHER COMMENTS UNTIL THE COURT
10:54AM 10 DECIDES WHAT TO DO WITH THESE HARDSHIPS.

10:54AM 11 THE COURT: MR. SCHENK, ANY COMMENT/OBSERVATION
10:54AM 12 ABOUT FEWER ALTERNATES?

10:54AM 13 MR. SCHENK: YOUR HONOR, I THINK THAT THAT IS A
10:55AM 14 RISKY SOLUTION TO THIS PROBLEM. I THINK WHAT WE LEARNED FROM
10:55AM 15 THE HOLMES TRIAL IS THAT A TRIAL OF THIS LENGTH IS BURDENSOME
10:55AM 16 ON INDIVIDUALS, THAT ISSUES COME UP DURING THE COURSE OF THE
10:55AM 17 TRIAL, AND IT'S EASIER NOW TO GET THE NUMBER OF SEATED JURORS
10:55AM 18 CORRECTLY, ALL WHO, AT LEAST THIS STAGE, THINK THAT THEY CAN
10:55AM 19 PARTICIPATE IN A TRIAL OF A 13-WEEK ESTIMATE.

10:55AM 20 AND THEN WE STILL WILL SEE ISSUES THAT COME UP.

10:55AM 21 BUT I DON'T THINK THE SOLUTION IS TO SORT OF SPEND CAPITAL
10:55AM 22 NOW THROUGH THE USE OF SEATING ALTERNATES, AND THEN RUNNING THE
10:55AM 23 RISK OF IT SEVERAL MONTHS IN, BECAUSE AT THAT POINT OBVIOUSLY
10:55AM 24 THE SOLUTION IS TO RESTART THE WHOLE TRIAL. AT LEAST WE HAVE
10:55AM 25 NOT STARTED YET.

1 ONE QUICK COMMENT ON THE TRAVEL TO EUROPE FOR 131. IT IS
2 THE END OF HER -- HER TRAVEL IS AT THE END OF JUNE. I THINK
3 THAT THAT'S THE SORT OF OUTSIDE FAR ESTIMATE OF WHEN NOT ONLY
4 THE TRIAL WILL END, BUT DELIBERATIONS WOULD HAVE BEGUN, AND IF
5 WE USE THE LENGTHY, LIKE MAYBE THE APPROPRIATE LENGTH OF
6 DELIBERATIONS FROM THE HOLMES TRIAL AS AN ESTIMATE FOR THIS
7 TRIAL, I THINK WE STILL SHOULD HAVE SOME TIME.

8 OBVIOUSLY THE GOVERNMENT DOESN'T KNOW IF THE DEFENSE PLANS
9 TO PUT ON A CASE OR, IF THEY DO, THE LENGTH OF IT.

10 SO IN SOME RESPECTS THE DEFENSE IS IN A GOOD POSITION TO
11 ESTIMATE THE BACK END OF THE TRIAL, AT LEAST THAT PORTION OF
12 THINGS.

13 BUT I DON'T THINK IT'S A REASON TO EXCUSE 131 AT THIS
14 POINT.

15 THE COURT: ANYTHING FURTHER, MR. COOPERSMITH?

16 MR. COOPERSMITH: NO, YOUR HONOR, OTHER THAN,
17 DEPENDING ON WHAT THE COURT DOES, THERE'S SOME ISSUES WITH THE
18 PEREMPTORY STRIKES AND HOW THEY'RE EXERCISED AND WHAT THE
19 CONSTITUTION OF THE BOX IS.

20 BUT, AGAIN, I WANT TO WAIT TO SEE HOW THIS COMES OUT
21 BEFORE WE ADDRESS THAT.

22 THE COURT: THANK YOU.

23 SO THE OTHER THING THAT WE CAN THINK ABOUT, WE TOLD THEM
24 THREE DAYS A WEEK, AND I THINK I ALSO TOLD THEM THAT SCHEDULE
25 MAY CHANGE TIMING-WISE. IT MAY BE, AS WE GET IN THE HOLMES

1 CASE, WE CAPTURE ADDITIONAL DAYS THROUGH THE WEEK, AND
2 THAT'S -- ONCE THE TRIAL PROCESS STARTS, AT LEAST THE
3 EXPERIENCE IN THE PREVIOUS CASE WAS THAT JURORS BECOME -- GAIN
4 SOME COMFORT WITH THE SCHEDULE. THEY SET THEIR SCHEDULES,
5 WORK, HOME, AND THEY'RE ABLE TO -- IT WAS A TERRIFIC JURY.
6 THEY WERE ABLE TO BE FLEXIBLE, AND WHEN WE NEEDED EXTRA DAYS,
7 WE GAVE THEM NOTICE, AND THAT WORKED. THAT WAS ACCOMPLISHED.
8 THEY WERE ABLE TO COME IN AN EXTRA DAY.

9 MY SENSE IS THAT THIS JURY WOULD NOT BE, WHATEVER THE JURY
10 IS, I THINK THAT'S JUST GENERAL HUMAN NATURE OF ONCE THE TRIAL
11 GETS STARTED, IT DEVELOPS ITS OWN ENERGY, AND IT COULD BE THE
12 MOTIVATION IS THAT THE JURORS WANT TO GET THE CASE DONE, SO
13 THEY'LL INVEST ADDITIONAL TIME TO DO THAT.

14 SO MY SENSE IS THAT THAT IS SOMETHING THAT WE CAN DO ALSO
15 WITH THE JURY.

16 MR. SCHENK, ANY OTHER OBSERVATIONS?

17 MR. SCHENK: NO. THANK YOU, YOUR HONOR.

18 MR. COOPERSMITH: NO, YOUR HONOR.

19 THE COURT: ANYTHING ELSE?

20 I'M INFORMED THAT TO BRING IN -- THE SOONEST WE CAN BRING
21 IN OUR THIRD PANEL IS TOMORROW MORNING, REGRETTABLY. WE CAN'T
22 GET THEM IN TODAY.

23 SO IT SEEMS THAT WE SHOULD BRING THEM IN, TOO.

24 IF WE STRIKE THESE THREE, THEN WE WOULD -- I THINK WE HAVE
25 TWO ALTERNATES LEFT, OR TWO PEOPLE LEFT ON THIS PANEL, AND THEY

10:58AM 1 WOULD NATURALLY FILL -- AND THAT'S WHAT THEY WOULD DO NOW IF WE
10:58AM 2 BRING ANOTHER PANEL IN, THE PEOPLE REMAINING ON THIS PANEL
10:58AM 3 WOULD -- AT LEAST THAT'S MY PRESUMPTIVE START, IS THAT THEY
10:58AM 4 WOULD THEN BE AVAILABLE STILL TO -- IN THE POOL TO FILL IN IN A
10:59AM 5 NATURAL WAY.

10:59AM 6 MR. COOPERSMITH: RIGHT, YOUR HONOR.

10:59AM 7 THE PROBLEM IS THAT -- YES, I THINK THAT IS CORRECT.

10:59AM 8 THE PROBLEM IS THAT IF THESE HARDSHIPS HAD BEEN DEALT
10:59AM 9 WITH, YOU KNOW, IN WHATEVER WAY, AND THESE PEOPLE HAD NOT BEEN
10:59AM 10 PRESENT OR IN THE POOL, WE WOULD HAVE HAD A DIFFERENT MIX OF
10:59AM 11 JURORS IN OUR PEREMPTORY STRIKE PHASE.

10:59AM 12 SO I THINK WE WOULD HAVE TO REDO THE PEREMPTORY STRIKE SO
10:59AM 13 THAT WE HAVE THE SAME OPPORTUNITY THAT WE WOULD HAVE HAD IN THE
10:59AM 14 FIRST PLACE.

10:59AM 15 THAT WAS THE POINT, I THINK, RIGHT?

10:59AM 16 THE COURT: SO WHAT WE WOULD LOOK AT IS IF THESE
10:59AM 17 THREE ARE STRICKEN, THEN WHAT IS THE -- HOW MANY ADDITIONAL
10:59AM 18 PREEMPTS DOES EACH SIDE GET? I GUESS THAT IS THE QUESTION. I
10:59AM 19 THINK THAT'S WHAT YOU WERE REFERENCING.

10:59AM 20 MR. COOPERSMITH: WELL, YOUR HONOR, IN THE
10:59AM 21 PEREMPTORY STRIKE PROCESS, WE USED ALL OF OUR PEREMPTORY
10:59AM 22 STRIKES, RIGHT?

10:59AM 23 THE COURT: NO, I WASN'T AWARE OF THAT.

10:59AM 24 MR. COOPERSMITH: I THINK THAT IS THE CASE, RIGHT?

10:59AM 25 THE COURT: OKAY.

10:59AM 1 MR. COOPERSMITH: BUT WE USED THOSE PEREMPTORY
11:00AM 2 STRIKES WITH A CERTAIN GROUP OF JURORS IN THE 12 AND A CERTAIN
11:00AM 3 GROUP OF JURORS IN THE 6.

11:00AM 4 AND IF YOU TAKE OUT JURORS 26 AND 101, RIGHT, THEN WE
11:00AM 5 WOULD HAVE HAD, ESPECIALLY AT THE END OF THE PEREMPTORY STRIKE
11:00AM 6 PROCESS, FOR THE LAST FEW STRIKES, WE WOULD HAVE HAD DIFFERENT
11:00AM 7 JURORS IN THE STRIKE, THE POSSIBLE STRIKE POOL.

11:00AM 8 AND THEN THE SAME WITH THE ALTERNATES, BECAUSE ADDITIONAL
11:00AM 9 JURORS, THE TWO THAT WERE REMAINING FROM PANELS ONE AND TWO
11:00AM 10 WOULD HAVE MOVED UP INTO THE SIX AND WE WOULD HAVE HAD THE
11:00AM 11 OPPORTUNITY TO CONSIDER THEM FOR STRIKES.

11:00AM 12 SO I THINK WE WOULD HAVE TO REDO THE PEREMPTORY STRIKE
11:00AM 13 PROCESS, EVEN THOUGH WE, AS IT STANDS NOW, AS I SAID, WE DON'T
11:00AM 14 HAVE ANY MORE.

11:00AM 15 BUT OTHERWISE WE'VE LOST THE OPPORTUNITY TO CONSIDER THE
11:00AM 16 JURORS.

11:00AM 17 THE COURT: WHAT DO YOU SUGGEST?

11:00AM 18 MR. COOPERSMITH: WELL, I THINK IF YOU -- WELL, I
11:00AM 19 MEAN, WE WOULD LIKE TO GET THE TRIAL MOVING, SO IT'S
11:00AM 20 REGRETTABLE THAT THIS HAS OCCURRED, AND I KNOW EVERYONE FEELS
11:00AM 21 THAT WAY, AND THEN WE HAVE TO BRING IN PANEL THREE.

11:00AM 22 BUT SINCE THAT APPEARS TO BE THE CASE, IF THE COURT
11:00AM 23 EXCUSES THREE JURORS, THEN I THINK WHAT HAS TO HAPPEN IS WE
11:01AM 24 HAVE TO GO THROUGH THE PROCESS WITH THE NEW PANEL. I DON'T
11:01AM 25 KNOW WHETHER ALL OF THE PANEL HAS TO BE BROUGHT IN OR SOME OF

11:01AM 1 THE THIRD PANEL. BUT ONCE WE DO THAT, I THINK WE HAVE TO GO
11:01AM 2 THROUGH THAT PROCESS AND THEN START THE PEREMPTORY STRIKE
11:01AM 3 PROCESS ANEW.

11:01AM 4 THE COURT: WHAT DOES THAT MEAN?

11:01AM 5 MR. COOPERSMITH: MEANING EACH SIDE HAS -- THE SIX
11:01AM 6 FOR THE GOVERNMENT AND THE TEN FOR THE DEFENSE AND THE THREE
11:01AM 7 FOR EACH OF THE ALTERNATES.

11:01AM 8 THE COURT: AND HOW DOES THAT COMPORT WITH THE
11:01AM 9 NUMBERS? YOU SAID WE DON'T HAVE TO BRING IN THE WHOLE PANEL
11:01AM 10 AND WE PICK OUT NUMBERS?

11:01AM 11 SO LET ME DO THIS. I APPRECIATE THAT. WE'LL HAVE TO
11:01AM 12 SOLVE THIS, OR CREATE SOME SOLUTIONS FOR THIS.

11:01AM 13 MR. COOPERSMITH: RIGHT.

11:01AM 14 THE COURT: AND WHAT I'M GOING TO DO IS TO STEP DOWN
11:01AM 15 AND ALLOW YOU TO MEET AND CONFER WITH YOUR TEAMS, AND THEN MEET
11:01AM 16 AND CONFER WITH EACH OTHER AND SEE IF YOU CAN EITHER
11:01AM 17 COLLABORATIVELY COME BACK WITH A JOINT STIPULATED SUGGESTION
11:01AM 18 THAT YOU BOTH AGREE WITH, OR OTHER OPTIONS, BECAUSE I DO THINK
11:02AM 19 THAT WE'LL NEED TO BRING IN THE PANEL, AN EXTRA PANEL.

11:02AM 20 TO YOUR POINT, MR. COOPERSMITH, DO WE BRING THE ENTIRETY
11:02AM 21 OF THAT PANEL IN?

11:02AM 22 MS. ROBINSON WILL TELL US THE NUMBER OF JURORS, WHAT THAT
11:02AM 23 IS. IT'S PROBABLY IN THE 40'S I WOULD THINK, SOMETHING LIKE
11:02AM 24 THAT.

11:02AM 25 DO WE BRING ALL OF THEM IN? HOW MANY DO WE BRING IN?

11:02AM 1 AND THEN YOU'LL TELL ME YOUR THOUGHTS ABOUT HOW MANY
11:02AM 2 PREEMPTS EACH SIDE SHOULD HAVE. WHAT DO WE DO WITH THE
11:02AM 3 ALTERNATES? AS I SAID, THE ALTERNATES THAT WE HAVE NOW,
11:02AM 4 THERE'S TWO LEFT REMAINING IN OUR PANEL.

11:02AM 5 IF WE STRIKE THESE THREE INDIVIDUALS, THEY MOVE IN BY
11:02AM 6 DEFAULT, I SUPPOSE, BY THE CENTIPEDE METHOD, AND THEN OUR NEXT
11:02AM 7 PANEL IS CALLED IN TO FILL WHATEVER SEATS WOULD BE REMAINING.
11:02AM 8 I THINK THAT WOULD BE THE NATURAL PROTOCOL.

11:02AM 9 AND DO WE ENGAGE AGAIN WITH TEN AND SIX AND THEN THREE AND
11:03AM 10 THREE?

11:03AM 11 SO THAT'S WHAT I WOULD LIKE YOU TO THINK ABOUT. I'M NOT
11:03AM 12 GOING TO TASK YOU WITH DOING THAT STANDING AT THE LECTERNS.
11:03AM 13 I'D LIKE YOU TO TALK WITH YOUR TEAMS ABOUT THAT.

11:03AM 14 MR. COOPERSMITH: THANK YOU, YOUR HONOR.

11:03AM 15 THE COURT: AND THEN LET'S CHAT AGAIN BEFORE THE
11:03AM 16 NOON HOUR.

11:03AM 17 MR. COOPERSMITH: OKAY. GREAT. THANK YOU.

11:03AM 18 MR. SCHENK: THANK YOU.

11:03AM 19 THE COURT: OKAY. BUT FOR NOW, PARDON ME, FOR NOW,
11:03AM 20 I'M NOT GOING TO LEAVE OUR PANEL DOWNSTAIRS WAITING.

11:03AM 21 I'M GOING TO ALLOW OUR PANEL THAT IS HERE TODAY, MY
11:03AM 22 THOUGHT WAS TO ALLOW THEM TO LEAVE, SUBJECT TO FURTHER
11:03AM 23 NOTIFICATION. THAT WOULD BE MY THOUGHT.

11:03AM 24 I DON'T WANT TO HAVE THE COMMISSIONER EXPRESS EXCUSALS IN
11:03AM 25 FRONT OF ALL OF THE OTHER PANEL MEMBERS, AND I DON'T MEAN TO

11:03AM 1 SUGGEST DISTRUST OR ANYTHING, BUT HUMAN NATURE IS THAT ONCE A
11:03AM 2 DOMINO FALLS, GRAVITY TAKES OVER. SO WE SHOULD AVOID THAT IF
11:04AM 3 WE CAN.

11:04AM 4 OUR COMMISSIONER CAN NOTIFY PEOPLE INDIVIDUALLY.

11:04AM 5 MR. COOPERSMITH: YES, YOUR HONOR.

11:04AM 6 THE COURT: SO WE'RE JUST GOING TO LET THE PANEL GO
11:04AM 7 HOME SUBJECT TO RECALL, AND THEN WE'LL CHAT AGAIN IN 30 MINUTES
11:04AM 8 OR SOMETHING LIKE THAT.

11:04AM 9 MR. COOPERSMITH: THANK YOU, YOUR HONOR.

11:04AM 10 MR. SCHENK: THANK YOU, YOUR HONOR.

11:04AM 11 (RECESS FROM 11:04 A.M. UNTIL 11:52 A.M.)

11:52AM 12 THE COURT: WE'RE BACK ON THE RECORD. ALL PARTIES
11:52AM 13 PREVIOUSLY PRESENT ARE PRESENT ONCE AGAIN.

11:52AM 14 WE'RE OUTSIDE OF THE PRESENCE OF ANY PROSPECTIVE PANEL
11:52AM 15 MEMBERS.

11:52AM 16 COUNSEL, YOU'VE HAD AN OPPORTUNITY TO MEET AND CONFER AND
11:52AM 17 DISCUSS WITH YOUR TEAMS AND COLLECTIVELY ABOUT THE STATUS OF
11:52AM 18 OUR SITUATION?

11:52AM 19 MR. SCHENK: YES, WE HAVE.

11:52AM 20 THE COURT: I'M EAGER TO HEAR YOUR THOUGHTS.

11:52AM 21 MR. SCHENK: THANK YOU VERY MUCH, YOUR HONOR.

11:52AM 22 SO WE MET AND CONFERRED WITH AN ASSUMPTION, AND THAT
11:53AM 23 ASSUMPTION WAS THAT THE COURT WOULD AGREE AND STRIKE THREE
11:53AM 24 JURORS THAT WE HEARD FROM THIS MORNING: THAT IS 101, 26, AND
11:53AM 25 134.

11:53AM 1 AND THAT FOLLOWING STRIKES, THE COURT FOLLOWS WHAT IS
11:53AM 2 CALLED THE CENTIPEDE METHOD, SO, FOR INSTANCE, THIS MORNING
11:53AM 3 JUROR NUMBER 1 WAS JUROR NUMBER 26. JUROR NUMBER 26 HAS ASKED
11:53AM 4 TO BE EXCUSED FOR HARDSHIP. IF THE COURT GRANTS THAT REQUEST,
11:53AM 5 JUROR 67, OR JUROR NUMBER 2, WOULD MOVE UP AND BECOME 1, AND
11:53AM 6 THAT WORKS ITS WAY ALL OF THE WAY DOWN TO THE ALTERNATE POOL.

11:53AM 7 THE FIRST ALTERNATE, IT ALSO HAPPENS, WAS ONE OF THE
11:53AM 8 JURORS THAT ASKS TO BE REMOVED. THAT WAS JUROR 134. SO OUR
11:53AM 9 FIRST AVAILABLE ALTERNATE IS ACTUALLY JUROR NUMBER 2.

11:54AM 10 SO WE HAVE A COUPLE OF POTENTIAL SOLUTIONS TO THIS
11:54AM 11 SITUATION. ONE IS, AS THE COURT NOTED, WOULD BE TO JUST MOVE
11:54AM 12 UP THREE ALTERNATES INTO THE -- ACTUALLY, I THINK IT'S MOVING
11:54AM 13 UP TWO ALTERNATES. IT WOULD BE -- JURORS 26 AND 101 ARE SEATED
11:54AM 14 JURORS WHO HAVE ASKED TO BE EXCUSED.

11:54AM 15 SO THEN WE WOULD TAKE TWO ALTERNATES FROM OUR CURRENT POOL
11:54AM 16 AND MOVE THEM INTO THE BOX, THOSE TWO PLUS THE ONE ALTERNATE
11:54AM 17 WHO HAS ASKED TO GO UNFORTUNATELY LEAVES US WITH ONLY THREE
11:54AM 18 ALTERNATES, AND WE THINK THAT'S AN INSUFFICIENT NUMBER TO BEGIN
11:54AM 19 THE TRIAL.

11:54AM 20 SO THEN THE QUESTION IS, WHAT DO WE DO WITH THAT?

11:54AM 21 AND I THINK THERE'S A DIFFERENCE OF OPINION ON WHAT TO DO
11:54AM 22 NOW. THE GOVERNMENT'S VIEW IS THAT WHAT WE ARE DOING IS
11:54AM 23 SEARCHING FOR THREE ALTERNATES. WE LOST THREE JURORS THIS
11:54AM 24 MORNING, WE FOLLOW THE CENTIPEDE METHOD TO FILL SEATS, THAT
11:54AM 25 MEANS IT IS THE BACK END OF THE ALTERNATE POOL, ALTERNATES 4,

1 5, AND 6 THAT WE NOW NEED TO GO THROUGH SOME PROCESS TO FIND.

2 WE, I THINK, COULD USE THE TWO REMAINING JURORS FROM
3 PANEL 2, THAT'S 179 AND 181, PLUS AS I UNDERSTAND IT ABOUT 26
4 JURORS FROM PANEL 3, SEE WHAT WE LEARN THROUGH A VOIR DIRE
5 PROCESS, AND SELECT THREE ADDITIONAL ALTERNATE JURORS.

6 ON FRIDAY WHEN WE SELECTED ALTERNATES, WE WERE LOOKING FOR
7 SIX ALTERNATES. WHEN WE WERE LOOKING FOR SIX ALTERNATES, EACH
8 SIDE HAD THREE STRIKES.

9 WE'RE LOOKING FOR HALF THAT NUMBER, WE'RE LOOKING FOR
10 THREE ALTERNATES, SO IT WOULD SEEM APPROPRIATE TO GIVE EACH
11 SIDE TWO STRIKES OR -- I DON'T THINK THAT THE GOVERNMENT HAS
12 THE PERFECT ANSWER ON THE NUMBER OF ALTERNATES. WE'RE HAPPY TO
13 HAVE DISCUSSIONS ABOUT THAT.

14 BUT WHAT WE ARE DOING IS LOOKING FOR THREE ALTERNATES, AND
15 THAT'S VERY SIMILAR TO WHAT WE DID IN THE AFTERNOON ON FRIDAY.
16 WE WOULD PASS OUT A PROPORTIONATE NUMBER OF STRIKES.

17 I THINK WHAT IS IMPORTANT HERE IS TO NOT LOSE THE BENEFIT
18 OF THE PROCESS WE WENT THROUGH LAST WEEK. WE WENT THROUGH A
19 PROCESS OVER THE COURSE OF SEVERAL DAYS WHERE WE QUALIFIED WHAT
20 ENDED UP BEING 40 PEOPLE. WE DETERMINED THAT THERE WERE 40
21 PEOPLE WE COULD THEN USE PEREMPTORY STRIKES ON THROUGH THAT
22 PROCESS. WE WERE ABLE TO SEAT A NUMBER OF JURORS, AND I THINK
23 NOW WHAT WE'RE DOING IS LOOKING FOR THREE ALTERNATES AND WE
24 HAVE A PROCESS TO USE TO GO ABOUT FINDING ALTERNATES. WE USED
25 IT ON FRIDAY. WE'RE LOOKING FOR HALF THE NUMBER OF ALTERNATES

11:56AM 1 RIGHT NOW THAN WE WERE, AND OUR VIEW IS THAT WE SHOULD FOLLOW A
11:56AM 2 SIMILAR PROCEDURE TO WHAT WE DID LAST WEEK FOLLOWING THE
11:56AM 3 QUESTIONING OF A THIRD PANEL.

11:56AM 4 I KNOW THE DEFENSE HAS A DIFFERENT SUGGESTION, SO I'LL
11:56AM 5 ALLOW MR. COOPERSMITH.

11:56AM 6 THE COURT: OKAY. THANK YOU.

11:56AM 7 MR. COOPERSMITH: THANK YOU, YOUR HONOR.

11:56AM 8 I THINK MR. SCHENK'S MATH IS RIGHT AS FAR AS IT GOES FOR
11:56AM 9 THAT PARTICULAR WAY OF HANDLING IT, BUT WE DO HAVE A DIFFERENT
11:57AM 10 SUGGESTION FOR THE COURT.

11:57AM 11 BUT I JUST WANT TO COME BACK TO JUROR NUMBER 131 FOR ONE
11:57AM 12 MINUTE, WHICH I KNOW -- THIS IS THE ARCHITECT WHO SAID THAT SHE
11:57AM 13 HAS A TRIP -- THE CONFERENCE IN PORTLAND ISN'T A PROBLEM IT
11:57AM 14 DOESN'T SOUND LIKE, BUT THEN SHE HAS THIS OTHER TRIP ON
11:57AM 15 JUNE 24TH.

11:57AM 16 SO STICKING WITH HER FOR A MINUTE, OUR CALCULATION IS THAT
11:57AM 17 IF WE STARTED TRIAL TOMORROW, WHICH NOW SEEMS OPENING AND
11:57AM 18 OPENING STATEMENT, WHICH IS IN DOUBT NOW THAT WE HAVE TO BRING
11:57AM 19 IN PANEL 3, EVEN THEN, THE 13 WEEKS PROJECTED WOULD, AS OUR
11:57AM 20 MATH GOES, TAKE US THROUGH JUNE 14TH.

11:57AM 21 AND I KNOW THE COURT MIGHT HAVE ADDITIONAL TRIAL DAYS AND
11:57AM 22 THAT COULD SPEED IT UP. BUT IF WE WENT WITH THE CURRENT
11:57AM 23 SCHEDULE, IT WOULD BE JUNE 14TH, RIGHT?

11:57AM 24 I CAN'T SAY WHETHER THERE'S GOING TO BE A DEFENSE CASE OR
11:57AM 25 NOT, BUT OBVIOUSLY THERE MIGHT BE, AND IF THAT OCCURRED, THAT

11:57AM 1 COULD TAKE SOME TIME.

11:57AM 2 I DON'T KNOW YET WHETHER MR. BALWANI WILL TESTIFY OR NOT,
11:58AM 3 BUT IF HE DID, THAT WOULD TAKE SOME TIME.

11:58AM 4 AND THEN AT THAT POINT WE WOULD BE IN DELIBERATIONS OR
11:58AM 5 CLOSE TO THAT TIME, OR EVEN BEYOND THE 24TH PERHAPS, RIGHT?

11:58AM 6 AND THE PROBLEM THAT WE HAVE IS THAT IF A JUROR IS SEATED,
11:58AM 7 AND IN THIS CASE IT WOULD BE 131, THIS ARCHITECT, AND WHAT WE
11:58AM 8 DON'T WANT IS A JUROR WHO IS ABOUT TO START DELIBERATIONS AND
11:58AM 9 SHE'S CONCERNED ABOUT HER TRIP AND, YOU KNOW, THERE'S AN
11:58AM 10 INCENTIVE TO MOVE THINGS ALONG QUICKLY, AND MAYBE HER FELLOW
11:58AM 11 JURORS KNOW SHE HAS A TRIP PLANNED.

11:58AM 12 I THINK THAT'S A BAD SITUATION, I THINK, FOR THE
11:58AM 13 ADMINISTRATION OF JUSTICE.

11:58AM 14 SO THAT'S MY CONCERN ABOUT 131.

11:58AM 15 SO I THINK THE SOLUTION TO THAT REALLY IS JUST TO SIMPLY
11:58AM 16 TELL HER THAT, YOU KNOW, CERTAINLY PEOPLE TAKES TRIPS AND
11:58AM 17 EVERYONE RESPECTS THAT, BUT YOU'LL HAVE TO BE PREPARED NOT TO
11:58AM 18 DO THAT, AND IF THAT'S A PROBLEM FOR YOU, YOU SHOULD SAY THAT
11:58AM 19 NOW.

11:58AM 20 I MEAN, I THINK THAT WOULD BE THE SOLUTION.

11:58AM 21 LET ME MOVE ON TO THE PEREMPTORY ISSUE.

11:59AM 22 SO LET'S ASSUME THAT 131 STAYS ON THE JURY, THEN
11:59AM 23 MR. SCHENK'S MATH IS RIGHT.

11:59AM 24 OKAY. SO WE NEED TWO ADDITIONAL JURORS TO FILL THE GROUP
11:59AM 25 OF 12, AND WE NEED ANOTHER THREE JURORS TO FILL THE ALTERNATE,

11:59AM 1 WE'LL CALL IT THE ALTERNATE BOX, THE SIX, RIGHT?

11:59AM 2 OUR ISSUE WITH MR. SCHENK'S PROPOSAL IS THAT IF JURORS 26
11:59AM 3 AND 101 HAD BEEN STRUCK FOR HARDSHIP, AND 134 AS AN ALTERNATE,
11:59AM 4 AND I DON'T KNOW THAT 134 EVER RAISED A HARDSHIP, THAT'S
11:59AM 5 ALTERNATE NUMBER 1 AT THE MOMENT.

11:59AM 6 THE OTHER TWO THERE WERE HARDSHIP ISSUES DISCUSSED. IF
11:59AM 7 THOSE JURORS HAD BEEN DISMISSED FOR HARDSHIP, MEANING 26, 131
11:59AM 8 AND 134, WE WOULD HAVE HAD A DIFFERENT MIX OF JURORS AT THE
11:59AM 9 POINT WHEN THE PARTIES EXERCISED PEREMPTORY STRIKES.

11:59AM 10 AND PEREMPTORY STRIKES ARE, YOU KNOW, YOU USE YOUR BEST
11:59AM 11 GUESS ABOUT WHO THE APPROPRIATE JURORS ARE TO STRIKE AND YOU'RE
12:00PM 12 REALLY COMPARING THE JURORS WHO ARE IN THE POOL THAT YOU HAVE
12:00PM 13 AN OPPORTUNITY TO STRIKE, AND WHEN THAT CHANGES, THE PEREMPTORY
12:00PM 14 STRIKES BECOMES NOT WHAT IT IS DESIGNED FOR AND IN OUR VIEW NOT
12:00PM 15 FAIR.

12:00PM 16 SO HOW DO WE DEAL WITH THAT?

12:00PM 17 OUR PROPOSAL IS AS FOLLOWS: WE HAVE TO CHOOSE EIGHT
12:00PM 18 PEOPLE, TWO FROM THE JURY BOX AND THREE FROM THE ALTERNATE
12:00PM 19 POOL. SO THAT MEANS -- I THINK IT'S EIGHT PEOPLE BECAUSE WE
12:00PM 20 HAVE TO PICK -- IF 134 GOES, WE NEED TWO JURORS TO FILL THE
12:00PM 21 SPOTS IN THE JURY POOL OF THE 12, WE HAVE TO PICK THREE TO FILL
12:00PM 22 IN THE ALTERNATE POOL ASSUMING THESE THREE JURORS ARE
12:00PM 23 DISMISSED.

12:00PM 24 SO WE THINK WHAT SHOULD HAPPEN IS WE STICK TO THE
12:00PM 25 CENTIPEDE METHOD WHERE THE NUMBERS SEQUENTIALLY FILL THE

12:01PM 1 RESPECTIVE BOXES.

12:01PM 2 BUT JUST LIKE WHEN YOU HAVE A TOTAL OF 18 PEOPLE YOU HAVE
12:01PM 3 TO PICK, THE DEFENSE GETS 13 STRIKES, INCLUDING THE ALTERNATE
12:01PM 4 STRIKES, AND THE GOVERNMENT GETS NINE, PROPORTIONALLY WE THINK
12:01PM 5 THE NUMBERS WORK OUT TO THE DEFENSE GETS SIX STRIKES TO CHOOSE
12:01PM 6 THE EIGHT AND THE GOVERNMENT GETS FOUR, AND THEN WE WOULD JUST
12:01PM 7 CHOOSE EIGHT PEOPLE FROM THE NEW GROUP, WHICH WOULD INCLUDE
12:01PM 8 JURORS 179 AND 181, AND THEN THOSE TWO, 179 AND 181, AND THEN
12:01PM 9 OF COURSE THE NEW JURORS HAVE TO GO THROUGH THE VETTING PROCESS
12:01PM 10 AND THE HARDSHIP AND CAUSE ISSUES, IF ANY.

12:01PM 11 AND ONCE THAT IS DONE AND WE KNOW WHO OUR GROUP OF JURORS
12:01PM 12 ARE, THEN WE SIMPLY CHOOSE EIGHT JURORS BASED ON SIX PEREMPTORY
12:01PM 13 STRIKES FOR THE DEFENSE AND FOUR FOR THE GOVERNMENT.

12:01PM 14 THE LOWEST NUMBERS WOULD GO INTO THE GROUP OF 12, AND THEN
12:02PM 15 THE REST OF THE JURORS WOULD SEQUENTIALLY FILL THE ALTERNATE
12:02PM 16 BOX.

12:02PM 17 THE COURT: MR. SCHENK.

12:02PM 18 MR. SCHENK: YOUR HONOR, I'M NOT SURE I UNDERSTAND
12:02PM 19 WHAT PROBLEM MR. COOPERSMITH IS CREATING A SOLUTION TO.

12:02PM 20 HE IS SAYING THAT THERE ARE EIGHT JURORS THAT WE NEED. I
12:02PM 21 THINK WHAT HE IS SUGGESTING, ALTHOUGH I'M NOT POSITIVE THIS IS
12:02PM 22 WHAT HE SAID, IS WE'VE LOST TWO JURORS IN THE SEATED 12 IF THE
12:02PM 23 COURT EXCUSES JUROR 26 AND 101.

12:02PM 24 WE ALSO HAVE SIX ALTERNATES. I THINK THAT'S HOW HE GETS
12:02PM 25 TO THE NUMBER EIGHT. BUT MAYBE I SHOULD PAUSE RIGHT THERE AND

12:02PM 1 ASK IF I'M RIGHT, BECAUSE EVERYTHING ELSE I'M GOING TO SAY
12:02PM 2 FOLLOWS FROM THAT AND I'LL WASTE TIME IF I'M WRONG.

12:02PM 3 MR. COOPERSMITH: THAT'S EXACTLY RIGHT.

12:02PM 4 JUST REAL QUICKLY, THE PROBLEM I'M TRYING TO SOLVE IS TO
12:02PM 5 PUT THE PARTIES IN A SIMILAR POSITION HAD JURORS 26 AND 101 AND
12:03PM 6 134 BEEN EXCUSED IN THE FIRST PLACE, AND THEN WE WOULD HAVE HAD
12:03PM 7 A DIFFERENT MIX OF JURORS TO EXERCISE PREEMPTORIES ON.

12:03PM 8 I'M JUST TRYING TO PUT US, IF NOT IN THE SAME POSITION, IN
12:03PM 9 A SIMILAR POSITION WITHOUT HAVING TO DO REDO THE ENTIRE
12:03PM 10 PROCESS.

12:03PM 11 THE COURT: RIGHT. I DON'T THINK ANYONE WANTS TO
12:03PM 12 REDO THE ENTIRE PROCESS. THAT SEEMS -- AND I APPRECIATE,
12:03PM 13 MR. COOPERSMITH, YOUR RECOGNITION OF A LACK OF A NECESSITY TO
12:03PM 14 DO THAT, BUT RATHER TO SOLVE THIS IN A DIFFERENT WAY.

12:03PM 15 MR. COOPERSMITH: RIGHT.

12:03PM 16 THE COURT: WE'VE GOT A VACUUM NOW OF EIGHT, AND HOW
12:03PM 17 DO WE PROPERLY FILL THAT VACUUM WITH WHAT WE HAVE?

12:03PM 18 MR. COOPERSMITH: YES.

12:03PM 19 THE COURT: WE'RE GOING TO NEED OUR THIRD PANEL TO
12:03PM 20 DO THAT. THAT NUMBER RIGHT NOW IS APPROXIMATELY 26 OR
12:03PM 21 SOMETHING LIKE THAT.

12:03PM 22 THE CLERK: TWENTY-EIGHT.

12:03PM 23 THE COURT: TWENTY-EIGHT TO FILL THOSE ADDITIONAL
12:03PM 24 SEATS.

12:03PM 25 IF WE USE THE CENTIPEDE METHOD, WE FILL THE VACUUM NOW

12:03PM 1 WITH THE ALTERNATES, THEY MOVE IN, AND THEN IT'S THE CHALLENGE
12:04PM 2 PROCESS FOR STRIKING FOR THOSE FROM THE 12, AND THEN THE
12:04PM 3 ALTERNATES.

12:04PM 4 I THINK THIS IS WHAT YOU'RE ADVOCATING NOW IN A LIMITED
12:04PM 5 WAY, MR. COOPERSMITH.

12:04PM 6 MR. COOPERSMITH: YES, YOUR HONOR.

12:04PM 7 THE COURT: RIGHT. AND THERE SEEMS TO BE SOME
12:04PM 8 EFFICIENCIES CAPTURED TO THAT, AND I'M TRYING TO SEE, OTHER
12:04PM 9 THAN THAT THERE'S NOTHING EFFICIENT ABOUT WHERE WE ARE RIGHT
12:04PM 10 NOW, I RECOGNIZE THAT.

12:04PM 11 BUT, MR. SCHENK, I'M DRAWN TOWARDS THAT SOLUTION.

12:04PM 12 MR. SCHENK: CAN I ASK WHAT WOULD HAPPEN UNDER THAT
12:04PM 13 PROCESS WITH ALTERNATE NUMBER 2? THAT'S JUROR 142. THE FIRST
12:04PM 14 ALTERNATE WE'RE ASSUMING THE COURT WILL EXCUSE, SO OUR FIRST
12:04PM 15 AVAILABLE ALTERNATE IS PRESENTLY JUROR 142.

12:04PM 16 IS THAT THE FIRST JUROR TO GO INTO THE BOX TO FILL, FOR
12:05PM 17 INSTANCE, JUROR 26, WHO IS THE FIRST SEATED JUROR THAT WE WILL
12:05PM 18 LOSE THIS MORNING? OR DOES 142 GO BACK INTO THIS MIX THAT
12:05PM 19 WE'RE EXERCISING PREEMPTORIES ON?

12:05PM 20 THE COURT: GOOD QUESTION. DO WE MOVE -- AND I
12:05PM 21 GUESS -- CAN I PHRASE IT THIS WAY: DO WE KEEP THE 12 WITH THE
12:05PM 22 VACUUM AND PUT OUR ALTERNATES INTO THE MIX WITH THE THIRD
12:05PM 23 TRANCHE AND THEY THEN BECOME ELIGIBLE FOR THE 12 AND THE 6?
12:05PM 24 DID I SAY THAT CORRECTLY?

12:05PM 25 MR. COOPERSMITH: SO, YOUR HONOR, FIRST OF ALL,

12:05PM 1 WE'RE -- I THINK WE'RE ALWAYS GOING TO BE MOVING JURORS INTO
12:05PM 2 EITHER THE 12 BOX OR THE 6 BOX IN SEQUENTIAL NUMBERS; RIGHT?

12:05PM 3 THE COURT: RIGHT.

12:05PM 4 MR. COOPERSMITH: I THINK THAT'S WHAT THE RULES
12:05PM 5 REQUIRE PROBABLY, RIGHT?

12:05PM 6 SO THAT'S TRUE.

12:06PM 7 IN TERMS OF JURORS 142 -- I GUESS IT'S JURORS 134 AND 142,
12:06PM 8 THOSE ARE CURRENTLY ALTERNATES 2 AND 3, RIGHT?

12:06PM 9 MR. SCHENK: NO. JUROR 134 IS ALTERNATE 1.

12:06PM 10 MR. COOPERSMITH: I'M SORRY. RIGHT. OKAY.

12:06PM 11 SO THE JURORS THAT WE'LL BE PUTTING IN THE JURY BOX IN
12:06PM 12 SEQUENTIAL ORDER WOULD BE 142 AND 164?

12:06PM 13 MR. SCHENK: CORRECT.

12:06PM 14 MR. COOPERSMITH: OKAY. SO THOSE TWO JURORS,
12:06PM 15 BECAUSE WE DIDN'T HAVE A CHANCE TO CONSIDER THEM AS SEATED
12:06PM 16 JURORS IN THE PEREMPTORY PROCESS, WE WOULD HAVE THE OPPORTUNITY
12:06PM 17 TO EXERCISE PREEMPTORIES ON THOSE TWO, AS WELL AS THE
12:06PM 18 ALTERNATES WHO THEN FILL THE ALTERNATE BOX, RIGHT?

12:06PM 19 SO THAT'S WHY I WAS PROPOSING, RATHER THAN TRYING TO BREAK
12:06PM 20 IT DOWN INTO A CERTAIN NUMBER OF PEREMPTORY STRIKES FOR THE 12
12:06PM 21 AND A CERTAIN NUMBER -- WE WOULD JUST SAY WE NEED EIGHT PEOPLE,
12:06PM 22 I'M PROPOSING SIX STRIKES FOR THE DEFENSE AND FOUR FOR THE
12:06PM 23 GOVERNMENT.

12:06PM 24 AND THEN AS SOON AS THAT PROCESS IS OVER, IN SEQUENTIAL
12:07PM 25 NUMBER ORDER, THE CURRENT ALTERNATES WOULD MOVE INTO THE BOX,

12:07PM 1 WHO ARE STILL AVAILABLE TO MOVE INTO THE BOX, AND THEN JURORS
12:07PM 2 FROM THE THIRD PANEL, THE TWO LEFT OVER FROM THE SECOND PANEL
12:07PM 3 AND THEN THE JURORS FROM THE THIRD PANEL WOULD THEN
12:07PM 4 SEQUENTIALLY MOVE INTO EITHER THE 12 OR THE 6, YOU KNOW, AS
12:07PM 5 APPROPRIATE.

12:07PM 6 THE COURT: SO WE HAVE 28, I'M SORRY, 28 IN THE
12:07PM 7 THIRD PANEL; IS THAT RIGHT, MS. ROBINSON?

12:07PM 8 THE CLERK: YES.

12:07PM 9 THE COURT: SO ARE YOU SAYING THAT WE'LL JUST TAKE
12:07PM 10 THE OTHERS, OUR ALTERNATES, AND WE'LL FILL THE BOX, AND
12:07PM 11 WHATEVER IS LEFT, THEY GO BACK AND JOIN THE 28?

12:07PM 12 MR. COOPERSMITH: I'M NOT SURE I FOLLOW THE COURT'S
12:07PM 13 QUESTION.

12:07PM 14 THE COURT: RIGHT. I'M JUST TRYING TO FIGURE OUT
12:07PM 15 HOW BEST TO FIT THESE NUMBERS IN THE GROUPS AND WHERE THEY GO.

12:07PM 16 MR. COOPERSMITH: RIGHT. NO, OF COURSE.

12:07PM 17 THE COURT: LET ME SAY, FIRST OF ALL, LET'S KEEP,
12:07PM 18 KEEP OUR 12, THE 12 THAT WE HAVE, THE ONES THAT WE HAVE
12:08PM 19 SELECTED, AND NOW WE HAVE TO FILL THESE TWO SLOTS FOR THE 12,
12:08PM 20 AND WHAT IS OUR UNIVERSE OF SELECTION FOR THOSE?

12:08PM 21 MR. COOPERSMITH: YEAH.

12:08PM 22 MR. SCHENK: CORRECT.

12:08PM 23 SO I THINK WHAT THE DEFENSE'S POSITION IS THAT WE ONLY
12:08PM 24 HAVE TEN LEFT OF THE 12, AND SEPARATE OUT THE ALTERNATES, PUT
12:08PM 25 THEM BACK INTO THE POOL.

12:08PM 1 THE COURT: RIGHT.

12:08PM 2 MR. SCHENK: SO WE'VE GOT FIVE ALTERNATES AND 28

12:08PM 3 POTENTIAL JURORS FROM PANEL 3, AND JURORS 179 AND 181 THAT ARE

12:08PM 4 SORT OF THE LEFTOVERS I SUPPOSE FROM PANEL 2.

12:08PM 5 AND THEN WE TAKE THE FIVE ALTERNATES, THE TWO LEFT OVER,

12:08PM 6 AND PANEL 3, AND AMONG THAT GROUP WE NEED EIGHT JURORS, AND,

12:09PM 7 YES, IF NOBODY STRIKES JUROR 142, WHO IS TODAY ALTERNATE

12:09PM 8 NUMBER 2, THAT JUROR MOVES INTO THE SEATED 12.

12:09PM 9 IF SOMEONE STRIKES THAT PERSON, THEN WHATEVER IS THE NEXT

12:09PM 10 LOWEST NUMBER, THAT PERSON MOVES IN, AND THEN DISTRIBUTE

12:09PM 11 PREEMPTORIES PROPORTIONATELY TO THIS UNIVERSE OF FIVE, TWO, AND

12:09PM 12 28.

12:09PM 13 IS THAT RIGHT?

12:09PM 14 MR. COOPERSMITH: I THINK THAT IS EXACTLY WHAT I'M

12:09PM 15 SUGGESTING.

12:09PM 16 ANOTHER WAY TO THINK OF IT IS THAT WE HAVE TEN JURORS IN

12:09PM 17 THE BOX OF 12 THAT ARE LOCKED IN, RIGHT? NO ONE IS DOING

12:09PM 18 ANYTHING WITH THEM.

12:09PM 19 AND THEN WE'RE JUST TRYING TO SELECT THESE ADDITIONAL

12:09PM 20 EIGHT, AND THEN THE PARTIES CAN EXERCISE PREEMPTORIES ON THOSE,

12:09PM 21 BUT THEY WOULD FILL THE BOX.

12:09PM 22 SO ALL OF THOSE ARE AVAILABLE FOR STRIKES IN THIS PROCESS,

12:09PM 23 WE'RE SUGGESTING SIX AND FOUR TO FILL THE EIGHT SEATS. ONCE

12:09PM 24 THAT IS COMPLETED, THE LOWEST SEQUENTIAL NUMBERS WILL MOVE INTO

12:09PM 25 THE 12, AND THEN OF COURSE OTHER JURORS WOULD MOVE INTO THE

12:10PM 1 SIX.

12:10PM 2 THE COURT: SO I THINK WE'RE ALL ON THE SAME PAGE AT
12:10PM 3 LEAST AS THAT FORMULA.

12:10PM 4 LET ME JUST ASK THIS: SO YOU'RE SUGGESTING THAT THE
12:10PM 5 STRIKES THEN WOULD BE LIMITED TO WHAT WE NEED TO FILL AS
12:10PM 6 OPPOSED TO THOSE WHO ARE ALREADY SEATED? YOU SAID "LOCKED IN."

12:10PM 7 MR. COOPERSMITH: THE TEN.

12:10PM 8 THE COURT: THE TEN. YOU'RE NOT GOING TO STRIKE --
12:10PM 9 YOU'RE BOTH GOING TO AGREE YOU WON'T EXERCISE STRIKES ON ANY OF
12:10PM 10 THE SEATED TEN, BUT RATHER WE'RE LOOKING AT THE EIGHT I'LL CALL
12:10PM 11 IT.

12:10PM 12 IS THAT RIGHT?

12:10PM 13 MR. COOPERSMITH: YES, YOUR HONOR. I MEAN, IT MAY
12:10PM 14 NOT BE A PERFECT SOLUTION, BUT THAT TO ME SEEMS SUFFICIENT TO
12:10PM 15 NOT HAVE TO START THE WHOLE PROCESS OVER AGAIN. THAT'S WHAT
12:10PM 16 WE'RE TRYING TO DO.

12:10PM 17 THE COURT: RIGHT. I APPRECIATE THAT.

12:10PM 18 MR. SCHENK.

12:10PM 19 MR. SCHENK: YES, THE GOVERNMENT'S VIEW STILL IS
12:10PM 20 WHAT YOU'RE DOING BY FOLLOWING THAT APPROACH IS GIVING BOTH
12:10PM 21 SIDES AN OPPORTUNITY TO EXERCISE PREEMPTORIES AGAIN ON A
12:10PM 22 PORTION OF THAT. WE'VE ALREADY HAD AN OPPORTUNITY TO EXERCISE
12:10PM 23 PREEMPTORIES ON FIVE OF THE JURORS WHO ENTERED THIS NEW POOL.

12:11PM 24 THE COURT: RIGHT.

12:11PM 25 MR. SCHENK: I DON'T THINK THAT IS NECESSARY. I

12:11PM 1 THINK WE'VE HAD THE OPPORTUNITY, WE ALREADY HAVE FIVE
12:11PM 2 ALTERNATES.

12:11PM 3 WHAT WE'RE NOW LOOKING FOR IS THREE JURORS TO REPLACE THE
12:11PM 4 THREE.

12:11PM 5 BUT I UNDERSTAND WHAT THE DEFENSE IS ASKING FOR, AND AS I
12:11PM 6 UNDERSTAND IT, THE DEFENSE IS NOT OBJECTING IF THE COURT
12:11PM 7 FOLLOWS A PROCESS OUTLINED BY THE DEFENSE, AND I THINK THERE
12:11PM 8 ARE ADVANTAGES TO THAT.

12:11PM 9 THE COURT: RIGHT.

12:11PM 10 I'M GOING TO REFRAIN FROM USING THE WORD "MULLIGAN," BUT
12:11PM 11 IT SEEMS LIKE WHAT YOU'RE ASKING TO DO IS TO BE ABLE TO REVISIT
12:11PM 12 AT LEAST AS TO THIS EIGHT, BUT NOT THE TEN.

12:11PM 13 MR. COOPERSMITH: RIGHT. THE REAL SIMPLE REASON IS
12:11PM 14 THAT WE WOULD HAVE A DIFFERENT MIX OF JURORS TO APPLY THE
12:11PM 15 PREEMPTORIES TO AND WE'RE TRYING TO PUT -- THE GOVERNMENT AS
12:11PM 16 WELL, THEY GET THEIR OPPORTUNITY AS WELL.

12:11PM 17 THE COURT: I APPRECIATE THAT.

12:11PM 18 WELL, I DO THINK, JUST OUT OF AN ABUNDANCE OF CAUTION, TO
12:12PM 19 MAKE SURE THAT WE CAPTURE AN OPPORTUNITY FOR BOTH SIDES HERE TO
12:12PM 20 EFFECTIVELY EXERCISE DECISIONS BASED ON THIS UNIQUE SITUATION
12:12PM 21 THAT WE FIND OURSELVES IN, I THINK I'LL ADOPT THIS PROCEDURE.

12:12PM 22 FIRST OF ALL, LET ME SAY THE CONDITION PRECEDENT TO THAT
12:12PM 23 IS ME STRIKING 101, 26, AND 134 FOR HARDSHIPS, AND I'M INCLINED
12:12PM 24 TO DO THAT, AND I'LL ASK THAT THE JURY COMMISSIONER REACH OUT
12:12PM 25 TO THEM INDIVIDUALLY AND TELL THEM THAT THEY'VE BEEN EXCUSED,

12:12PM 1 101, 26, AND 134.

12:12PM 2 I AM NOT EXCUSING 131, NOR AM I EXCUSING 133. I DO
12:12PM 3 BELIEVE THAT THOSE SCHEDULES -- THEIR SCHEDULES MIGHT BE ABLE
12:12PM 4 TO BE ADJUSTED, AND CERTAINLY THE COURT CAN DO SOME SCHEDULING
12:13PM 5 ADJUSTMENT ON OUR END, TOO, TO HOPEFULLY AVOID ANY CONFLICT.

12:13PM 6 SO I'LL ADOPT YOUR PROCEDURE, MR. COOPERSMITH.

12:13PM 7 WHAT WE'LL DO IS WE'LL BRING IN THE THIRD TRANCHE
12:13PM 8 TOMORROW. WE WILL ENGAGE VOIR DIRE WITH THEM. I MIGHT -- MY
12:13PM 9 HOPE IS THAT IT WILL BE AS EFFICIENT AS OUR SECOND DAY OF VOIR
12:13PM 10 DIRE.

12:13PM 11 AND WHEN THAT FINISHES, THAT PROCESS IS FINISHED, WE'LL
12:13PM 12 ALLOW THEM TO GO HOME, AND THEN WE'LL ENGAGE YOUR SELECTION
12:13PM 13 PROCESS AS WE DID FRIDAY AFTERNOON, AND HOPEFULLY WE CAN GET A
12:13PM 14 JURY SELECTED.

12:13PM 15 AND THEN THE IDEA IS THAT WEDNESDAY WE WOULD PRE-INSTRUCT,
12:13PM 16 I WOULD PRE-INSTRUCT, OPENING STATEMENTS, AND THEN IF TIME
12:13PM 17 PERMITS, WE CAN BEGIN WITH EVIDENCE.

12:13PM 18 MR. COOPERSMITH: ON WEDNESDAY?

12:14PM 19 THE COURT: RIGHT.

12:14PM 20 MR. COOPERSMITH: YES, YOUR HONOR.

12:14PM 21 THE COURT: DOES THAT WORK?

12:14PM 22 MR. SCHENK: YES.

12:14PM 23 MR. COOPERSMITH: YES.

12:14PM 24 THE COURT: OKAY.

12:14PM 25 MR. SCHENK: YOUR HONOR, MAY I HAVE JUST A MOMENT?

12:14PM 1 THE COURT: OF COURSE.

12:14PM 2 (DISCUSSION OFF THE RECORD.)

12:14PM 3 MR. SCHENK: YOUR HONOR, A PROCEDURE QUESTION FOR
12:14PM 4 PREEMPTORIES TOMORROW.

12:14PM 5 WE'RE LOOKING FOR EIGHT TOTAL JURORS FROM THE SORT OF
12:15PM 6 THREE ORIGINAL BUCKETS: OUR FIVE ALTERNATES, TWO JURORS THAT
12:15PM 7 REMAINED FROM PANEL 2, AND THEN 28 JURORS FROM THE NEW GROUP.

12:15PM 8 THE COURT ALLOWS PARTIES TO EXERCISE PREEMPTORIES IN
12:15PM 9 DIFFERENT GROUPS. YOU EXERCISE PREEMPTORIES FOR THE SEATED 12,
12:15PM 10 BUT FOR NOW IT'S ACTUALLY JUST TWO THAT WE'RE LOOKING FOR, AND
12:15PM 11 THEN THE COURT ALLOWS THE PARTIES TO EXERCISE PREEMPTORIES FOR
12:15PM 12 ALTERNATES.

12:15PM 13 SO I WONDER IF THE COURT HAS A THOUGHT OR SOME GUIDANCE
12:15PM 14 FOR US ON THE APPLICATION PROCESS TO THAT FOR THE EXERCISE
12:15PM 15 TOMORROW; IN OTHER WORDS, DO WE GET A CERTAIN NUMBER OF STRIKES
12:15PM 16 THAT ESSENTIALLY WE SHOULD BE DRAWING A LINE UNDER, WE CAN
12:15PM 17 EXERCISE STRIKES IN THIS GROUP BECAUSE WE'RE LOOKING FOR TWO
12:16PM 18 SEATED JURORS, AND THEN WE CAN EXERCISE PREEMPTORIES AFTER
12:16PM 19 WE'VE SELECTED THOSE TWO, AFTER WE'VE EXHAUSTED OR PASSED, AND
12:16PM 20 THEN WE CAN EXERCISE SEPARATELY PREEMPTORIES WHEN WE SEEK TO
12:16PM 21 FIND SIX ALTERNATES.

12:16PM 22 THE COURT: SURE. THE ALTERNATIVE WOULD BE YOU
12:16PM 23 EXERCISE ALL OF YOUR STRIKES ON PERHAPS THE 12, THE SEATS FOR
12:16PM 24 THE 12, THE TWO, AND THEN YOU'RE LEFT WITH NONE FOR THE
12:16PM 25 ALTERNATES.

12:16PM 1 MR. COOPERSMITH, DO YOU HAVE A THOUGHT?

12:16PM 2 MR. COOPERSMITH: YES, YOUR HONOR. TO TRY TO MAKE
12:16PM 3 IT SIMPLE, MY PROPOSAL WAS SIX STRIKES FOR THE DEFENSE AND FOUR
12:16PM 4 FOR THE GOVERNMENT.

12:16PM 5 WHAT WE WERE THINKING IS SINCE WE HAVE TO PICK EIGHT
12:16PM 6 PEOPLE, WE WOULD SIMPLY EXERCISE THOSE STRIKES ALL IN ONE GROUP
12:16PM 7 REGARDLESS OF WHETHER THEY'RE THE TWO THAT HAVE TO FILL THE 12
12:16PM 8 OR THE 6 WHO HAVE TO FILL THE ALTERNATE BOX.

12:16PM 9 AND THEN, OF COURSE, AS I SAID, JURORS WOULD MOVE NEITHER
12:16PM 10 INTO THE GROUP OF 12 OR THE 6 IN SEQUENTIAL ORDER AS USUAL,
12:17PM 11 THAT SEEMS A SIMILAR PROCESS.

12:17PM 12 I THINK WHAT MR. SCHENK IS PROPOSING IS THAT YOU SOMEHOW
12:17PM 13 BREAK DOWN THE NUMBER OF STRIKES BETWEEN THE 12 VERSUS THE --
12:17PM 14 BUT THAT WOULD MEAN THAT YOU'RE ONLY EXERCISING STRIKES ON THE
12:17PM 15 TWO JURORS WE MOVE IN, AND I THINK TO PUT EVERYONE IN A SIMILAR
12:17PM 16 POSITION, I THOUGHT DOING IT AS A GROUP OF EIGHT, RIGHT, MAKES
12:17PM 17 MORE SENSE. BUT THAT'S -- THAT WAS OUR PROPOSAL, RIGHT?

12:17PM 18 THE COURT: SURE. BUT IN THE REGULAR PROCESS, TEN
12:17PM 19 AND SIX ARE RELATED TO THE 12.

12:17PM 20 MR. COOPERSMITH: RIGHT.

12:17PM 21 THE COURT: AND THEN HOWEVER MANY ALTERNATES ARE
12:17PM 22 PARSED OUT.

12:17PM 23 SO THERE IS SOME SEPARATION TO THAT, AND AS I MENTIONED TO
12:17PM 24 MR. SCHENK, IF WE DO IT -- IF WE DON'T SEPARATE THOSE, THEN A
12:17PM 25 PARTY MIGHT EXERCISE ALL OF THEIR PREEMPTS ON THE TWO AND HAVE

12:17PM 1 NONE LEFT OVER FOR THE ALTERNATE POSITIONS, WHICH IS SOMETHING
12:18PM 2 THAT THE REGULAR RULES PROCESS SEEKS TO AVOID, IF THAT MAKES
12:18PM 3 SENSE.

12:18PM 4 I'D LIKE TO, I'D LIKE TO GIVE YOU A CERTAIN NUMBER IN THE
12:18PM 5 SAME PROPORTION IF THAT'S POSSIBLE FOR THE 12, AND THEN GIVE
12:18PM 6 YOU THE SAME NUMBER FOR THE SIX REMAINING, THREE AND THREE,
12:18PM 7 BECAUSE THAT'S WHAT EACH OF YOU HAD BEFORE.

12:18PM 8 SO IF WE START BACKWARD, EACH OF YOU WILL HAVE THREE AND
12:18PM 9 THREE FOR THE ALTERNATES, THEN LET'S FIND A SOLUTION FOR HOW
12:18PM 10 MANY DO YOU HAVE PROPORTIONALLY FOR THE 12?

12:18PM 11 MR. COOPERSMITH: WELL, I SUPPOSE IF YOU GO THAT
12:18PM 12 WAY, YOUR HONOR, YOU'VE GOT -- IF YOU WENT WITH THE SIX AND
12:18PM 13 FOUR STRIKES, AND THEN YOU HAVE THREE AND THREE FOR THE
12:18PM 14 ALTERNATES, THAT WOULD LEAVE TWO AND THREE FOR THE BOX; RIGHT?
12:18PM 15 THAT WOULD BE AT LEAST --

12:18PM 16 THE COURT: SURE. RIGHT.

12:18PM 17 ANY THOUGHTS ABOUT --

12:19PM 18 MR. SCHENK: MAY I HAVE ONE MOMENT?

12:19PM 19 THE COURT: YES. WHY DON'T YOU MEET WITH YOUR
12:19PM 20 STATISTICIANS AND WE CAN --

12:19PM 21 (RECESS FROM 12:19 P.M. UNTIL 12:21 P.M.)

12:21PM 22 MR. COOPERSMITH: ONE CORRECTION. MY STATISTICIANS
12:21PM 23 TELL ME MY MATH WAS A LITTLE OFF, WHICH MAYBE ISN'T SURPRISING,
12:21PM 24 AND IF MY PROPOSAL WERE ADOPTED AND YOU HAVE TO BREAK DOWN THE
12:21PM 25 STRIKES FROM THE 12 AND THE STRIKES FROM THE 6, THEN IF EACH

12:21PM 1 SIDE GOT THREE AND THREE, WHICH IS THE NORMAL COURSE FOR
12:21PM 2 ALTERNATES, RIGHT --

12:21PM 3 THE COURT: RIGHT.

12:21PM 4 MR. COOPERSMITH: -- THEN THAT WOULD LEAVE THREE
12:21PM 5 STRIKES FOR THE DEFENSE FOR THE MAIN JURY POOL AND ONE FOR THE
12:21PM 6 GOVERNMENT, BECAUSE IF IT'S FOUR -- IF THE GOVERNMENT HAD FOUR
12:21PM 7 TOTAL AND THEY HAD THREE STRIKES FOR THE ALTERNATE POOL, THEN
12:21PM 8 IT WOULD LEAVE THE GOVERNMENT WITH ONE.

12:21PM 9 SO THEN THAT PROPOSAL WOULD BE, FOR THE JURY OF 12, WE'RE
12:21PM 10 ONLY TRYING TO FILL TWO SEATS, IT WOULD BE THREE STRIKES FOR
12:21PM 11 THE DEFENSE AND ONE FOR THE GOVERNMENT.

12:21PM 12 AND THEN FOR THE ALTERNATE POOL, IT WOULD PROCEED WITH THE
12:21PM 13 THREE AND THREE, WHICH IS HOW IT WORKS NORMALLY.

12:22PM 14 THE COURT: SO ARE YOU ADDING THE ALTERNATE STRIKES
12:22PM 15 INTO YOUR MATH? I'M TRYING TO KEEP THEM SEPARATE IF I CAN.

12:22PM 16 MR. COOPERSMITH: OKAY. KEEPING THEM SEPARATE,
12:22PM 17 RIGHT?

12:22PM 18 THE COURT: RIGHT.

12:22PM 19 MR. COOPERSMITH: BECAUSE MY ORIGINAL PROPOSAL WAS
12:22PM 20 NOT KEEPING THEM SEPARATE AND I PROPOSED SIX STRIKES AND FOUR
12:22PM 21 STRIKES; RIGHT?

12:22PM 22 NOW IF WE SEPARATE, RIGHT, THAT WOULD MEAN IF WE GO WITH
12:22PM 23 THREE STRIKES EACH FOR EACH PARTY FOR THE ALTERNATE POOL, THEN
12:22PM 24 THAT MEANS WE USED THREE STRIKES IN THAT PROCESS; AND THEN WE
12:22PM 25 GO BACK TO THE GROUP OF 12, THAT WOULD LEAVE US WITH THREE

12:22PM 1 STRIKES BECAUSE SIX MINUS THREE IS THREE.

12:22PM 2 THEN THE GOVERNMENT WOULD HAVE -- IF THEY HAVE FOUR

12:22PM 3 STRIKES AS A TOTAL OR HAD THREE STRIKES FOR THE ALTERNATE POOL,

12:22PM 4 THAT WOULD LEAVE THEM WITH -- FOUR MINUS THREE EQUALS ONE. SO

12:22PM 5 THREE AND ONE FOR THE JURORS WHO ARE SEATED JURORS, AND THEN

12:22PM 6 THREE AND THREE FOR THE ALTERNATES. THAT'S HOW THAT MATH WOULD

12:22PM 7 WORK.

12:22PM 8 MR. SCHENK: I'M GOING TO START OVER.

12:22PM 9 (LAUGHTER.)

12:23PM 10 MR. SCHENK: SEPARATING THEM, STRIKES FOR ALTERNATES

12:23PM 11 AND STRIKES FOR IN THE BOX, IS STATUTORY, SO THE COURT SHOULD

12:23PM 12 FOLLOW ITS INCLINATION AND SEPARATE OUT OUR STRIKES.

12:23PM 13 IT IS FINE WITH THE GOVERNMENT TO ONCE AGAIN USE THREE

12:23PM 14 STRIKES FOR EACH SIDE BECAUSE WE'RE LOOKING TO SEAT THE EXACT

12:23PM 15 SAME NUMBER. WE'RE LOOKING TO SEAT SIX.

12:23PM 16 SO, AGAIN, IT NOT ONLY MAKES SENSE TO SEPARATE, BUT TO USE

12:23PM 17 THE SAME NUMBER OF STRIKES THAT WE USED ON FRIDAY WHEN WE

12:23PM 18 SELECTED.

12:23PM 19 THE PROBLEM WITH THEN SUBTRACTING THE THREE STRIKES FROM

12:23PM 20 THE NUMBERS THAT MR. COOPERSMITH ORIGINALLY PROPOSED IS BECAUSE

12:23PM 21 NOW THE PROPORTIONS HAVE CHANGED AND YOU SHOULDN'T SUBTRACT

12:23PM 22 THREE FROM THE FOUR TOTAL FOR THE GOVERNMENT AND THREE FROM THE

12:23PM 23 SIX TOTAL OR EIGHT TOTAL, WHATEVER THE NUMBER WAS, FOR THE

12:23PM 24 DEFENSE.

12:23PM 25 RIGHT NOW WE'RE LOOKING TO SEAT TWO JURORS IN THE BOX.

12:23PM 1 AND IF YOU MAINTAIN THE SAME PROPORTIONS TO DETERMINE HOW MANY
12:24PM 2 STRIKES EACH SIDE GETS, IT BREAKS DOWN TO SOMETHING LIKE ONE OR
12:24PM 3 TWO STRIKES FOR THE DEFENSE -- I'M SORRY, FOR THE GOVERNMENT,
12:24PM 4 AND TWO OR THREE STRIKES FOR THE DEFENSE. YOU END UP WITH
12:24PM 5 DECIMAL POINTS.

12:24PM 6 SO I DON'T HAVE AN OBJECTION TO ROUNDING UP OR GIVING THE
12:24PM 7 DEFENSE THE ADDITIONAL STRIKE, BUT THE GOVERNMENT SHOULDN'T BE
12:24PM 8 LEFT WITH JUST ONE IN THE BOX AND EACH SIDE SHOULD HAVE THREE
12:24PM 9 FOR THE ALTERNATES.

12:24PM 10 THE COURT: I'M THINKING OF THREE AND THREE FOR
12:24PM 11 ALTERNATES AND THREE AND TWO FOR THE 12.

12:24PM 12 MR. COOPERSMITH: YOUR HONOR, I THINK WE CAN LIVE
12:24PM 13 WITH THAT.

12:24PM 14 MR. SCHENK: WE AGREE.

12:24PM 15 THE COURT: OKAY. LET'S DO THAT.

12:24PM 16 MR. COOPERSMITH: OKAY.

12:24PM 17 THE COURT: AND LET'S LOCK THAT MATH IN.

12:24PM 18 OKAY. LET ME DRAW YOUR ATTENTION TO 182, WHO I THINK IS
12:24PM 19 THE FIRST JUROR IN THE THIRD PANEL.

12:25PM 20 AND I NOTE THIS JUROR TRAVELS FROM SANTA CRUZ. I LOOK AT
12:25PM 21 HER AGE AND I ALSO LOOK AT HER. SHE USES A -- TELLS US SHE
12:25PM 22 USES A MAGNIFYING GLASS FOR READING.

12:25PM 23 I BELIEVE SHE INFORMS US OF A HEALTH CONDITION. I'M GOING
12:25PM 24 TO ASK COUNSEL TO PAY ATTENTION TO HER HANDWRITING, WHICH MAY
12:25PM 25 BE INFORMATIVE OF SOMETHING.

12:25PM 1 MY THOUGHT WAS TO ASK YOU WHETHER OR NOT WE SHOULD THINK
12:25PM 2 ABOUT EXCUSING HER FOR HARDSHIP.

12:26PM 3 (DISCUSSION OFF THE RECORD.)

12:26PM 4 THE COURT: THE ADDITIONAL INFORMATION I HAVE,
12:26PM 5 COUNSEL, WAS INFORMATION NOT CONTAINED IN THE QUESTIONNAIRE,
12:26PM 6 BUT THAT JUROR 182 SHARED WITH THE JURY COMMISSIONER.

12:26PM 7 SHE APPARENTLY HAS PERIPHERAL NEUROPATHY, I THINK WAS THE
12:26PM 8 TERM USED, AND SHE TRAVELS SOME DISTANCE. I THINK THE
12:26PM 9 COMMISSIONER WAS INFORMED OR OBSERVED IT TOOK ABOUT TWO HOURS
12:27PM 10 FOR HER TO COMPLETE THE QUESTIONNAIRE, PERHAPS BECAUSE OF THIS
12:27PM 11 CONDITION.

12:27PM 12 IF THIS TRIAL IS LIKE THE PREVIOUS, THERE WILL BE
12:27PM 13 EXHIBITS, THERE WILL BE THINGS THAT YOU WOULD PROBABLY WANT
12:27PM 14 THIS JUROR TO OBSERVE AND CONSUME BY THAT.

12:27PM 15 SO I JUST RAISE THAT NOW OUT OF AN ABUNDANCE OF CAUTION.

12:27PM 16 MR. SCHENK: YOUR HONOR, THE GOVERNMENT HAS NO
12:27PM 17 OBJECTION TO EXCUSING 182 FOR HARDSHIP. I REACHED SOME OF THE
12:27PM 18 SAME CONCLUSIONS THE COURT DID IN OBSERVING THE JUROR'S
12:27PM 19 COMMENTS AND HANDWRITING IN THE QUESTIONNAIRE, AND GIVEN THE
12:27PM 20 DISTANCE THE JUROR TRAVELS AND THE LENGTH OF THE TRIAL, AND THE
12:27PM 21 NUMBER OF EXHIBITS THE GOVERNMENT AT LEAST INTRODUCED IN THE
12:27PM 22 LAST TRIAL, I THINK IT'S APPROPRIATE TO EXCUSE FOR HARDSHIP.

12:28PM 23 MR. COOPERSMITH: NO OBJECTION, YOUR HONOR.

12:28PM 24 THE COURT: OKAY. THANK YOU.

12:28PM 25 SO I WILL EXCUSE 182, JUROR 182 FOR HARDSHIP, AND THE

12:28PM 1 COMMISSIONER CAN SO INFORM THAT THIS JUROR NEED NOT TRAVEL
12:28PM 2 TOMORROW.

12:28PM 3 MR. COOPERSMITH: RIGHT.

12:28PM 4 YOUR HONOR, THERE ARE SOME ADDITIONAL JURORS IN THIS GROUP
12:28PM 5 THAT WE THINK PRESENT SOME PROBLEMS. FOR EXAMPLE, JUROR 190,
12:28PM 6 SHE CITED POSSIBLE HARDSHIP ISSUES IN HER QUESTIONNAIRE. SHE
12:28PM 7 SAID SHE HAS DIFFICULTY HEARING, DIFFICULTIES IN HEARING, AND
12:28PM 8 HER HUSBAND NEEDS HELP. SHE APPEARS TO HAVE SOME LANGUAGE
12:28PM 9 ISSUES.

12:28PM 10 THERE WAS ALSO SOME CONCERN THAT WE HAD ABOUT HER
12:28PM 11 RESPONSES ABOUT WHAT SHE THINKS ABOUT ELIZABETH HOLMES IN
12:28PM 12 QUESTION 67 AND 68 ABOUT WANTING THE DEFENSE TO PUT FORTH PROOF
12:28PM 13 OF INNOCENCE.

12:28PM 14 AND I THINK IT WOULD HARDSHIP AND CAUSE FOR 190. AND I'LL
12:29PM 15 STOP THERE FOR THE MOMENT.

12:29PM 16 THE COURT: ARE WE GOING TO DO THIS? DO YOU WANT TO
12:29PM 17 GO THROUGH HARDSHIPS? IS THIS SOMETHING YOU WANT TO DO?

12:29PM 18 MR. COOPERSMITH: WELL, I WOULD, BUT WE CAN DO IT
12:29PM 19 TOMORROW MORNING. I WAS WONDERING IF THE COURT GRANTED ANY OF
12:29PM 20 THESE, THEY WOULDN'T HAVE TO --

12:29PM 21 THE COURT: DO YOU HAVE AN ADDITIONAL LIST LIKE YOU
12:29PM 22 PREPARED YESTERDAY OR FRIDAY?

12:29PM 23 MR. COOPERSMITH: UNFORTUNATELY, I DON'T HAVE ONE I
12:29PM 24 CAN HAND UP, BUT I DO HAVE IT IN FRONT OF ME THAT I CAN ORALLY
12:29PM 25 PRESENT.

12:29PM 1 THE COURT: WELL, I WONDER IF -- I KNOW WE'RE ALL
12:29PM 2 BUSY, BUT DO YOU WANT TO SHARE YOUR INFORMATION -- DO YOU WANT
12:29PM 3 TO MEET AND CONFER ABOUT THIS TO SEE IF WE CAN GET AGREEMENT ON
12:29PM 4 SOME LIKE WE DID BEFORE?

12:29PM 5 WHAT IS THE MOST EFFICIENT WAY TO PROCEED FROM YOUR
12:29PM 6 PERSPECTIVE?

12:29PM 7 MR. SCHENK: LET ME MAKE A SUGGESTION.

12:29PM 8 I THINK IN LARGE PART THE CAUSE, UNLESS THEY'RE OBVIOUS,
12:29PM 9 AND WE'VE DEALT WITH SOME CAUSE ALREADY IN THIS GROUP, I THINK
12:30PM 10 THOSE WE CAN HANDLE DURING THE VOIR DIRE TOMORROW.

12:30PM 11 HARDSHIP I APPRECIATE MAKES SENSE TO DO AHEAD OF TIME IF
12:30PM 12 THERE'S NO REASON TO BRING THE JUROR TO COURT IF, AS THE COURT
12:30PM 13 POINTED OUT FOR THE JUROR THAT WE JUST DISCUSSED, EVEN THE
12:30PM 14 TRAVEL TO COURT ITSELF COULD PRESENT HARDSHIP.

12:30PM 15 SO WHY DON'T THE PARTIES MEET AND CONFER, AND IF WE HAVE
12:30PM 16 STIPULATIONS, JURORS WHO WE THINK SHOULD BE EXCUSED, WE CAN
12:30PM 17 PROVIDE THEM TO THE COURT STAFF, AND IF THE COURT REVIEWS AND
12:30PM 18 AGREES, THAT INDIVIDUAL COULD BE EXCUSED.

12:30PM 19 BUT I DON'T THINK IT'S THE GOVERNMENT'S VIEW THAT WE NEED
12:30PM 20 TO HAVE A HEARING TO GO THROUGH THESE INDIVIDUALS BECAUSE,
12:30PM 21 AGAIN, MY RECOLLECTION IS THAT FOR SOME OF THEM YOU'VE SPOKEN
12:30PM 22 ABOUT THEM.

12:30PM 23 THE COURT: OKAY. I'M LOOKING AT A LIST THAT I
12:30PM 24 HAVE. JUROR NUMBER 191 TALKS ABOUT, I THINK THIS IS SOMEBODY
12:30PM 25 INVOLVED IN THE CRIMINAL JUSTICE SYSTEM, AND TALKS ABOUT

12:31PM 1 SUPERVISING INDIVIDUALS AND PERHAPS THIS IS A HARDSHIP. BUT
12:31PM 2 LET ME JUST SAY I WOULD NOT FIND THAT A HARDSHIP. SO IF THAT'S
12:31PM 3 ONE ON YOUR LIST, I WOULD JUST GIVE YOU A HEADS UP.

12:31PM 4 MR. COOPERSMITH: IT'S OFF THE LIST NOW, YOUR HONOR.

12:31PM 5 (LAUGHTER.)

12:31PM 6 THE COURT: SO IF THAT'S ANY HELP.

12:31PM 7 THAT'S GREAT. IF YOU WANT TO MEET AND CONFER, AND IF YOU
12:31PM 8 CAN REACH AGREEMENT AND FIND SOME, THEN THAT WOULD BE HELPFUL
12:31PM 9 TO ME FOR OUR DISCUSSION TOMORROW.

12:31PM 10 AND THEY'RE COMING IN AT 9:00 O'CLOCK, THAT IS, I WANT
12:31PM 11 THEM IN THE COURTROOM AT 9:00 O'CLOCK, WHICH MEANS THEY'LL
12:31PM 12 ARRIVE EARLIER.

12:31PM 13 AND WE CAN MEET BEFORE WE BRING THEM UP TO DISCUSS SOME
12:31PM 14 THINGS. 8:30 I SUPPOSE IS A GOOD TIME TO MEET, AND WE'LL SEE
12:31PM 15 WHAT WE CAN GET DONE.

12:31PM 16 MR. COOPERSMITH: YES, YOUR HONOR.

12:31PM 17 THE COURT: DOES THAT MAKE SENSE?

12:31PM 18 MR. SCHENK: YES. THANK YOU.

12:31PM 19 THE COURT: OKAY. AND IF YOU HAVE AGREEMENT OR
12:31PM 20 WHATEVER YOU HAVE, I'D BE HAPPY TO RECEIVE IT. THAT WOULD HELP
12:31PM 21 ME.

12:31PM 22 MR. COOPERSMITH: OKAY. YES, WE WILL DO THAT,
12:32PM 23 YOUR HONOR.

12:32PM 24 THE COURT: OKAY. GREAT. THANK YOU.

12:32PM 25 MR. COOPERSMITH: THANKS.

12:32PM

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MR. SCHENK: THANK YOU, YOUR HONOR.

12:32PM

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THE CLERK: COURT IS ADJOURNED.

12:32PM

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(COURT ADJOURNED AT 12:32 P.M.)

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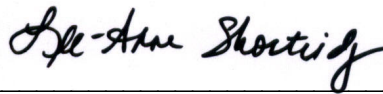
CERTIFICATE OF REPORTERS

WE, THE UNDERSIGNED OFFICIAL COURT REPORTERS OF THE
UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA, 280 SOUTH FIRST STREET, SAN JOSE, CALIFORNIA, DO
HEREBY CERTIFY:

THAT THE FOREGOING TRANSCRIPT, CERTIFICATE INCLUSIVE, IS
A CORRECT TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE
ABOVE-ENTITLED MATTER.



IRENE RODRIGUEZ, CSR, CRR
CERTIFICATE NUMBER 8076



LEE-ANNE SHORTRIDGE, CSR, CRR
CERTIFICATE NUMBER 9595

DATED: MARCH 14, 2022